Supreme Court, U. S.
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JOINT APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

Nos. 76-1234 & 76-1261

PATRICIA R. HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.,

Petitioners

—*v.*—

BARBARA ROSS, ET AL.

and

PATRICIA R. HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.,

Petitioners

—*v.*—

HILDA ABRAMS, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

PETITIONS FOR WRITS OF CERTIORARI FILED ON MARCH 4, 1977 AND MARCH 11, 1977

PETITIONS GRANTED, MARCH 23, 1977

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RELEVANT DOCKET ENTRIES

H 75-506

BARBARA ROSS, ET AL.

v.

COMMUNITY SERVICES, INC., ET AL.

DATE	PROCEEDINGS
1975	
April 22	(1) Complaint and Exhibit A.
April 22	(2) Motion for Preliminary Injunction, Affidavits (9) and Memorandum in support thereof.
April 23	(3) Summons issued as to Defendants, COMMUNITY SERVICES, INC., UPLANDS ASSOCIATES A. etc., UPLANDS ASSOCIATES B, etc., and MORTON SARUBIN, etc. (Each served) 4/30/75)
April 23	(4) Summons issued as to Defendants, CARLA A. HILLS, etc., H.R. CRAWFORD, etc., and EVERETT H. ROTSCHILD, etc. (Each served—see Marshall's returns)
April 28	(5) Motion of plaintiffs for a temporary restraining order, and affidavits of Barbara Ross, Ella Sparks, Kathleen Armes, Bernice Johnson, Beverly Stewart, Cynthia Jackson, Doris Johnson, Barbara Campbell, and Carol Stover attached thereto, and memorandum in support thereof. (2 c/s)
April 28	(6) Affidavit of Morton T. Sarubin in support of opposition of defendants to motion of plaintiff for temporary restraining order, and attachment.
April 28	— Conference in chambers, re: temporary restraining order before Young, J.

DATE	PROCEEDINGS

1975

April 28 (7) Temporary Restraining Order (Young, J.) that defendants are restrained until May 8, 1975 at 4:30 p.m. from taking summary ejectment action against plaintiffs as therein more particularly set forth.

April 30 — Status conference held before Harvey, J.

May 6 (8) Motion of plaintiffs for summary judgment, and memorandum in support thereof. (2 c/s)

May 6 (9) Motion of plaintiffs for authorization to maintain suit as a class action, and memorandum of points and authorities in support thereof. (2 c/s)

May 8 (10) Temporary Restraining Order (Harvey, J.) that defendants are restrained until May 14, 1975 at 10:00 a.m. from taking summary ejectment action against plaintiffs as therein more particularly set forth. (Cy. sent)

May 8 (11) Proposed preliminary injunction submitted by plaintiffs.

May 9 (12) Supplemental memorandum of plaintiffs on legislative history. (2c/s)

May 9 (13) Memorandum of Non-Federal Defendants in support of oral request of non-federal defendants for prompt disposition of this case. (2 c/s)

May 9 (14) Supplemental affidavit of Morton T. Sarubin on behalf of non-federal defendants and exhibit A attached thereto. (2c/s)

May 9 (15) Motion of non-federal defendants for consolidation of trial on the merits with application for preliminary injunction, and proposed order. (2 c/s)

May 12 (16) Motion of federal defendants for summary judgment, affidavit of H.R. Crawford in support thereof, affidavit of Albert J. Kliman in support thereof, affidavit of Jack A. Meyer in support thereof and memorandum brief in support thereof. (2 c/s)

DATE	PROCEEDINGS

1975

May 16 —— Hearing on all pending motions before Harvey, J.

May 16 (17) Second supplemental affidavit of Morton T. Sarubin submitted on behalf of non-federal defendants in opposition to motion of plaintiffs for preliminary injunction, and exhibit attached thereto.

May 16 —— Oral opinion rendered by the Court.

May 19 (18) Opposition of federal defendants to proposed order. (2c/s)

May 19 (19) Order (Harvey, J.) that the class herein is certified, that the federal defendants shall make certain determinations as therein more particularly set forth, that the class members shall make certain payments as therein set forth, and that this Court will retain jurisdiction over the parties herein, and exhibits attached thereto. (Cy.Sent)

May 22 (20) Transcript of Proceedings before the Court (Harvey, J.) (Oral Opinion) dated May 16, 1975.

May 23 (21) Notice of Appeal of Federal Defendants, Carla A. Hills, H. R. Crawford and Everett H. Rothschild. (copies mailed by Clerk—5-27-75)

May 23 (22) Motion of Federal Defendants for a Stay Pending Appeal, or in the alternative, for a stay of 15 days, Memorandum Brief in support thereof, affidavit of H. R. Crawford in support thereof, and proposed Order. (2 c/s)

May 27 (23) Order (Harvey, J.) that the motion for a stay pending appeal filed by the federal defendants is "DENIED", and that the federal defendants should make the required payments to the private defendants within ten (10) days within the date of this Order. (Cys. sent)

DATE	PROCEEDINGS

1975

June 19 (24) Motion of Federal Defendants to dismiss appeal filed by said Defendants and Order (Harvey, J.) as prayed and Notice. (cys. mailed 6/24/75—BB)

June 25 (25) Interrogatories of plaintiffs propounded to federal defendants and Exhibit A attached thereto.

June 26 (26) ANSWER of federal defendants to the complaint.

June 26 (27) Memorandum and Order (Harvey, J.) dated May 16, 1975.

June 30 (28) Motion of Plaintiffs to cite for contempt, memorandum of points and authorities in support thereof, and Order (Harvey, J.) directing federal defendants to show cause on or before July 30, 1975 as therein more particularly set forth. (Cys. delivered to U.S. Marshal 6/30/75) (See returns of USM)

July 2 (29) Notice of federal defendants of actions taken to comply with the Court's order of May 19, 1975, and affidavit of Fred W. Pfaender in support thereof. (2 c/s)

July 14 (30) Notice of federal defendants of actions taken to comply with the Court's order of May 19, 1975, and affidavit of Fred W. Pfaender in support thereof. (2 c/s)

July 21 (31) Motion of plaintiffs for leave to withdraw motion of plaintiffs to site Federal defendants for contempt, and order (Harvey, J.) granting leave to withdraw said motion as prayed. (cys. sent)

July 29 (32) Response of Federal defendants to interrogatories propounded by plaintiff. (c/s)

DATE	PROCEEDINGS

1975

Aug. 1 (33) Motion of federal defendants for summary judgment, and memorandum brief in support thereof, and request for modified order. (2 c/s).

Aug. 4 (34) Motion of plaintiffs to compel answers to interrogatories propounded to federal defendants, exhibit A attached thereto, copy of affidavit of Robert P. Kalish, points and authorities in support thereof, and request for hearing. (2 c/s)

Aug. 11 (35) Reply memorandum of plaintiffs in opposition to motion of defendants for summary judgment. (2 c/s)

Aug. 19 (36) Motion of federal defendants for protective order. (2 c/s).

Aug. 19 (37) Motion of federal defendants to expedite consideration of case upon merits. (2 c/s).

Aug. 19 (38) Memorandum of federal defendants in support of their motion for protective order and their motion to expedite consideration of case upon merits and their opposition to the motion of plaintiffs to compel answers to interrogatories. (2/c/s.)

Aug. 25 (39) Memorandum of federal defendants in further support of their motion for summary judgment and in opposition to motion of plaintiffs for summary judgment. (2 c/s).

Aug. 28 (40) ANSWER, request for modified order, and memorandum in support thereof, of non-federal defendants to motion for summary judgment and request for modified order of federal defendants. (1 c/s).

Sept. 12 —— Status conference held before Harvey, J.

DATE	PROCEEDINGS

1975

Sept. 24 (41) Interim Order (Harvey, J.) "REFLECTING" certain additional matters, as therein more particularly set forth, pending the Court's determination on summary judgment. (ccs mailed counsel 9/24/75).

Sept. 24 (42) Motion and Order (Harvey, J.) "GRANTING" leave to withdraw interrogatories of plaintiffs propounded to federal defendants and the motion of plaintiffs to compel answers to interrogatories propounded to federal defendants. (ccs sent counsel 9/24/75).

Dec. 31 (43) OPINION (Harvey, J.) (1) "GRANTING" motion of plaintiffs for summary judgment; (2) "DENYING" motion of federal defendants for summary judgment; (3) "FINDING" plaintiffs and their class are entitled to a permanent injunction requiring federal defendants to make monthly subsidy payments to the Defendant Uplands in the amounts previously agreed upon; and (4) "DIRECTING" counsel to confer and submit an appropriate Final Order to the Court. (ccs mailed counsel).

1976

Jan. 26 (44) Consent Order (Harvey, J.) "ADJUDGING AND DECREEING" (1) motion of plaintiffs and their class for summary judgment be and is hereby "GRANTED"; (2) cross-motion of federal defendants for summary judgment be and is hereby "DENIED"; and (3) that permanent injunction be and is hereby "GRANTED" to the Defendants, Uplands Associates A and Uplands Associates B against the federal defendants and the federal defendants are required to make monthly subsidy payments to the Defendants, Uplands Associates A and Uplands Associates B, in the sum of $9,166.88. (c/s mailed counsel).

DATE	PROCEEDINGS
1976	
Jan 29	(45) Motion of federal defendants to reconsider and alter or amend the judgment or in the alternative for a stay pending appeal or determination whether appeal would be taken with a copy of an affidavit of Carla A. Hills, Secretary of Department of Housing and Urban Development, with brief in support thereto. (2 c/s)
Feb. 9	(46) Notice of federal defendants to appeal to Supreme Court if motion of defendant to reconsider and alter or amend or in the alternative for a stay pending appeal is denied by this Court, affidavits of Thomas J. O'Connor, Robert C. Odle, Jr., and Exhibits A through C in support thereto. (2 c/s)
Feb. 13	(47) Answer of plaintiffs in opposition to motion of federal defendants to reconsider and for a stay pending appeal. (3 c/s)
Feb. 20	(48) Answer of private defendants in opposition to motion of federal defendants to reconsider and for a stay pending appeal. (2 c/s).
Feb. 24	(49) Memorandum and Order (Harvey, J.) "DENYING" motion of federal defendants, to reconsider and alter or amend this Court's final order of January 26, 1976 and "DENYING" motion of federal defendant for a stay of such order pending appeal. (c/s mailed to counsel 2/24/76).
March 4	(50) Notice of Appeal of Federal Defendants Carla A. Hills, H. R. Crawford and Everette H. Rothschild. (C/M 3/8/76).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No.: H 75-506

[Filed: 22nd of April, 1975]

BARBARA ROSS,
402 Athol Avenue, Apt. B,
Baltimore City, Maryland

and

ELLA SPARKS,
408 Swann Avenue, Apt. A,
Baltimore City, Maryland

and

KATHLEEN M. ARMES,
4261 Old Frederick Road, Apt. A,
Baltimore City, Maryland

and

BERNICE JOHNSON,
510 Glen Allen Drive, Apt. E,
Baltimore City, Maryland

and

BEVERLY STEWART
4609 Manordene Road, Apt. B,
Baltimore, Maryland

and

CYNTHIA JACKSON,
408 Athol Avenue, Apt. B,
Baltimore City, Maryland

and

DORIS JOHNSON,
4653 Manordene Road, Apt. B,
Baltimore, Maryland

and

BARBARA CAMPBELL,
500 Glen Allen Drive, Apt. F,
Baltimore City, Maryland

and

CAROL STOVER,
410 Athol Avenue, Apt. D,
Baltimore City, Maryland

PLAINTIFFS, INDIVIDUALLY, AND AS REPRESENTATIVES OF A CLASS

vs.

COMMUNITY SERVICES, INC.
4605 Edmondson Avenue
Baltimore, Maryland 21229

SERVE:

JULIA PATERSON, Resident Agent
6-8 East Read Street
Baltimore, Maryland 21202

UPLANDS ASSOCIATES A, a Maryland
Limited Partnership
6-8 East Read Street
Baltimore, Maryland 21202

UPLANDS ASSOCIATES B, a Maryland
Limited Partnership
6-8 East Read Street
Baltimore, Maryland 21202

MORTON SARUBIN, Individually
and doing business as
Uplands Associates

and

CARLA A. HILLS, Individually and in her capacity as
Secretary of the Department of Housing and Urban
Development
451 Seventh Street, S.W.
Washington, D.C. 20410

and

H. R. CRAWFORD, Individually and in his capacity as Assistant Secretary for Housing Management of the Department of Housing and Community Development
451 Seventh Street, S.W.
Washington, D.C. 20410

and

EVERETT H. ROTHSCHILD, Individually and in his capacity as Acting Director of the Baltimore Area Office, Department of Housing and Urban Development
Mercantile Bank & Trust Building
Baltimore, Maryland 21202

DEFENDANTS

COMPLAINT

FOR DECLARATORY AND INJUNCTIVE RELIEF

I.

Preliminary Statement and Factual Background

1. The plaintiffs, individually and on behalf of all others similarly situated, seek declaratory and injunctive relief to compel rescission of the Department of Housing and Urban Development's (HUD) approval of a 18% rental increase effective May 1, 1975, or in the alternative, to compel the defendants, Uplands Associates A & B et al, to apply for and the defendants, HUD, et al to implement the operating subsidy provision for Section 236 projects required by Section 212 of the Housing and Community Development Act of 1974; and until such application is acted upon, plaintiffs seek to enjoin the defendants, Uplands Associates A & B, et al, from collecting rents from the plaintiffs in excess of twenty-five percent (25%) of their income.

On December 27, 1974 the Supplemental Appropriations Act[1] was signed into law. This act provided the necessary appropriations to effectuate the operating subsidy provision.

[1] Pub.L. 93-414, 93rd Cong., H.R. 15572 (Sept. 6, 1974).

2. A previous suit involving essentially the same parties hereto was filed in this Court on January 13, 1975 (Civil Action No.: H-75-34). Although the plaintiffs in that case challenged the legality of a 5% rental increase for the Uplands Apartment Complex, effective January 1, 1975, the issues there were necessarily different from the issues raised herein. In that case plaintiffs based their suit on the defendants' failure to accord them either an administrative or due process hearing prior to the rental increase, in violation of HUD Regulation 24 C.F.R. 401 et seq., and the Fifth Amendment of the United States Constitution. Plaintiffs make no such contention with respect to the overall 18% rental increase,[2] effective May 1, 1975. The issue raised in the present suit to wit, HUD's obligation to pay to Uplands Associates, the Section 236 project owner, an operating subsidy sufficient to pay the increase in utility costs and property taxes above the initial operating expense level, thereby obviating the need for a rental increase, did not ripen into controversy until February 18, 1975,[3] the date on which the defendant Secretary was required by law (Section 212(g) of the Housing and Community Development Act of 1974), to establish the initial operating expense level as a prerequisite to payment of the operating subsidy.

3. Individually named plaintiffs in this action and the class which they represent are tenants of Uplands Apartments in Baltimore City, Maryland. Their individual incomes do not exceed 80% of the median income for the Baltimore SMSA, and the rental increase, effective May 1, 1975, will cause them to be paying more than 30% of their income for rent. The Uplands project is clearly eligible for the operating subsidy under Section 212(f)(3) and (g) of the Housing and Community Development Act of 1974.

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[2] The 18% rent increase represents the increase over the rent charged prior to 1/1/75; many tenants have not paid the 5% rent increase, effective 1/1/75.

[3] Section 212(g) (12 U.S.C. Section 1715 z-1(g)) provides specifically that the Secretary shall establish the initial operating expense level for any project not later than 180 days after August 22, 1974.

4. The apartments are owned by the defendants, Upland Associates A & B and Morton Sarubin, and managed by the Defendant, Community Services, Inc. The apartments were financed under mortgages insured by the Federal Housing Authority pursuant to section 236 of the National Housing Act, 12 U.S.C. Sec. 1715 z-1 and continue to receive subsidies under the Act.

5. The computations by HUD for the rental increase were based on the increased costs for utilities, property taxes, and "other justified operational costs." Plaintiffs, upon information and belief, aver that the defendants, Uplands Associates A & B, are eligible to receive from HUD funds for the entire amount of the increase in operating costs above the initial operating expense level.

6. In addition, HUD is required by Section 212(g) of the 1974 Housing and Community Development Act to establish a reserve fund from all rentals collected in excess of basic rental charges and to use this fund primarily as operating subsidies for Section 236 projects.

7. Unless the defendants are enjoined from imposing the rental increase, effective May 1, 1975, or in the alternative, unless the defendant, HUD, is compelled to pay Uplands an operating subsidy sufficient to off-set the increased costs above the initial operating expense level, thereby making unnecessary the rental increase, the plaintiffs will be unable to pay the rental increase, will be evicted, and will consequently be caused to suffer irreparable loss and injury because there is no adequate low cost housing for them in or around Baltimore City.

II.

Jurisdiction

8. This action arises under the National Housing Act, 12 U.S.C. § 1701 *et seq.*, in particular, 12 U.S.C. § 1715z-1, as amended by Section 212 of the Housing and Community Development Act of 1974. Jurisdiction is conferred on this Court by the following statutes: 28 U.S.C. § 1361, mandamus against federal defendants; 28 U.S.C. § 1337, actions arising out of Congressional legislation relating to commerce; 5 U.S.C. § 702-704, the Adminis-

trative Procedures Act; and 28 U.S.C. § 1331, the amount in controversy exceeding ten thousand dollars ($10,000) for each plaintiff. Jurisdiction of this court over the private defendants is conferred by Rule 19(a) of the Federal Rules of Civil Procedure.[4] Declaratory relief is sought pursuant to 28 U.S.C. § 2201-2202.

III.

Plaintiffs

9. The Plaintiff, Barbara Ross, age 37, has been and is now a tenant at the Uplands Apartments, residing with her four children in a three bedroom apartment, Apartment B, Athol Avenue in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $177 to $209 a month, beginning 5/1/75. She has a gross income of $4896 a year and the increased rent will constitute 51.4% of her gross income.

10. The Plaintiff, Ella Sparks, has been and is now a tenant at the Uplands Apartments, residing with her two children in a two bedroom (small) apartment at Apartment A, 408 Swann Avenue in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $141 to $166 a month, beginning 5/1/75. She has a gross income of $4224 a year and the increased rent will constitute 47% of her gross income.

11. The Plaintiff, Kathleen M. Armes, age 28, has been and is now a tenant at the Uplands Apartments, residing with her three children in a two bedroom apartment at Apartment A, 4261 Old Frederick Road in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $141 to $166 a month, beginning 5/1/75. She has a gross income of $2712 a year and the increased rent will constitute 73.5% of her gross income.

12. The Plaintiff, Bernice Johnson, age 45, has been and is now a tenant at the Uplands Apartments, residing with her adult daughter and the latter's child in a two

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[4] *Langevin* v. *Chenango Court, Inc.* (2d Cir., 1971), 447 F.2d 296, 300.

bedroom (small) apartment at Apartment E, 510 Glen Allen Drive in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $141 to $166 a month, beginning 5/1/75. She and her adult daughter together have a gross income of $3792 a year and the increased rent will constitute 52.5% of her gross income.

13. The Plaintiff, Beverly Stewart, has been and is now a tenant at the Uplands Apartments, residing with her two children in a two bedroom (medium) apartment at Apartment B, 4609 Manordene Road in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $144 to $170 a month, beginning 5/1/75. She has a gross income of $6379 a year and the increased rent will constitute 31.9% of her gross income.

14. The Plaintiff, Cynthia Jackson, has been and is now a tenant of the Uplands Apartments, residing with her two children in a three bedroom apartment at Apartment B, 408 Athol Avenue, in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $177 to $209 a month, beginning 5/1/75. She has a gross income of $2328 a year and the increased rent will constitute 108% of her gross income.

15. The Plaintiff, Doris Johnson, has been and is now a tenant at the Uplands Apartments, residing with her one child in a two bedroom (medium) apartment at Apartment E, 4653 Manordene Road in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $144 to $170 a month, beginning 5/1/75. She has a gross income of $5769 a year and the increased rent will constitute 35.4% of her gross income.

16. The Plaintiff Barbara Campbell, age 32, has been and is now a tenant at the Uplands Apartments, residing with her one child in a two bedroom (medium) apartment at Apartment F, 500 Glen Allen Drive in Baltimore City. She has received notice from the private Defendants that her rent will be increased from $151 to $170 a month, beginning 5/1/75. She has a gross income

of $1776 a year and the increased rent will constitute 115% of her gross income.

17. The Plaintiff, Carol Stover, has been and is now a tenant at the Uplands Apartments, residing in a one bedroom apartment at Apartment D, 410 Athol Avenue in Baltimore City. She has received notice that her rent will be increased from $123 to $145 a month, beginning 5/1/75. She has a gross income of $4800 a year and the increased rent will constitute 36% of her gross income.

IV.

Defendants

18. The defendants, Morton Sarubin, individually and doing business as Uplands Associates, Uplands Associates A, a Maryland limited partnership, Uplands Associates B, a Maryland limited partnership, are all owners of the Uplands Apartments project, a 989 unit apartment complex in Baltimore City, State of Maryland.

19. The defendant, Community Services, Inc., a Maryland Corporation, operates and manages the Uplands Apartments. It is the management agent of the Uplands Associates A, and Uplands Associates B.

20. Defendant Carla A. Hills is Secretary of the Department of Housing and Urban Development (HUD) of the United States of America. She has overall responsibility for the administration and enforcement of all laws, regulations, powers and duties pertaining to the operation of that agency. In particular, defendant Hills is responsible for the administration of the National Housing Act, 12 U.S.C. § 1701 *et seq.*

21. Defendant H. R. Crawford is the Assistant Secretary for Housing Management, Department of Housing and Urban Development. He is responsible for the management of housing projects constructed under the National Housing Act and built pursuant to HUD subsidy and/or loan guarantee programs and also under authority delegated to him by the Secretary. In particular, he is responsible for the administration and enforcement of the § 236 housing program.

22. Defendant Everett H. Rothschild is area acting director of the Baltimore HUD Area Office and in that capacity is responsible for administering and enforcing the § 236 program in Maryland and all laws, regulations and procedures applicable thereto.

V.

Class Action

23. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the named plaintiffs bring this action individually and on behalf of all others similarly situated. Plaintiffs' class is comprised of all persons having an income of 80% of the median income for the Baltimore SMSA, whose rent on 5/1/75 will exceed 30% of their gross incomes, who presently reside at the Uplands Apartments and who may reside there in the future. This class is so numerous that joinder of all members is impossible or impracticable. There are questions of law and fact common to the class. The named plaintiffs will fairly and adequately protect the interests of the class. The defendants have acted on grounds generally applicable to the class, thereby making preliminary and final injunctive and declaratory relief appropriate with respect to the class as a whole.

VI.

Factual Allegations

24. Uplands Apartments is a low to moderate income housing project financed under Title 12 U.S.C. § 1715 z-1. Defendants Community Services, Inc., Uplands Associates A, Uplands Associates B and Morton Sarubin, own and operate this project pursuant to agreements signed between themselves and HUD acting through defendants Hills, Crawford and Rothschild. Uplands Apartments contain 989 rental units and are located in Baltimore City, Maryland.

25. The United States Department of Housing and Urban Development (HUD) and defendants Hills, Crawford and Rothschild in their official capacities are charged with the administrative supervision and direction of the

§ 236 program of low and moderate income interest subsidized housing, 12 U.S.C. § 1715 z-1. Pursuant to that authority, HUD has entered agreements and disbursed funds with the intent and purpose of providing housing pursuant to the program and of establishing local grantees of federal funds for the certification and construction of § 236 low and moderate income housing projects.

26. Congress enacted the National Housing Act in order to provide adequate housing to "families with incomes so low they could not otherwise decently house themselves." (12 U.S.C. § 1701t). The Section 236 program is designed to further this goal by providing federal financing to assist in the construction of "rental housing projects designed for occupancy by lower income families" (12 U.S.C. § 1715z-a). Section 236 authorized HUD to make periodic interest reduction payments to a mortgagee on behalf of a project owner in an amount not to exceed the sum necessary to reduce the effective interest rate payments on the mortgage for said owner to 1 per centum per annum. The savings realized by this subsidy is passed on to the tenants in the form of reduced rental payments pursuant to Section 236(f) (12 U.S.C. § 1715 z-1(f).

27. As a condition for receiving the benefits of the act, the project owner must operate the project in accordance with such requirements with respect to tenant eligibility, lease agreements and rents as HUD may prescribe. In approving rents and charges, HUD looks at the following and similar factors:

"(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental incomes necessary to provide a reasonable return on the investment consistent with providing reasonable rentals to tenants." 24 C.F.R. § 221.531(c).

28. As a condition for receiving the benefits of interest reduction payments, the project owner must operate the project in accordance with such requirements with respect to tenant eligibility, lease agreements and rents as HUD may prescribe. In addition, an owner adopts and HUD approves procedures for the periodic recertifi-

cation of the income of tenants in relation to the rent paid. In no case is an owner of such a project to charge a qualified tenant rent in excess of 25% of his income or the basic rental whichever is greater, 12 U.S.C. § 1715 z-1(f), 24 C.F.R.

29. The private defendant owners each have entered into a Regulatory Agreement with HUD pursuant to 28 U.S.C. § 1715z-1 and regulations promulgated thereunder. The Standard Regulatory Agreement (FHA Form 3136) provides in pertinent part:

> "4. The owners covenant and agree that:
>
> b. The rental charged for each unit which will include all utilities except telephone, will be equal to 25% of the tenant's income or the basic rental, whichever is greater, but in no event shall rental charged exceed the fair market rental.
>
> h. They shall require all tenants who do not pay the fair market to execute a lease in the form prescribed by the Commissioner, and shall not rent any unit in the project for less than 30 days nor more than one year;
>
> i. No change shall be made in the basic rental or fair market rental unless approved by the Commissioner.

30. Plaintiffs and members of their class are low income families within the meaning of Title 28 U.S.C. § 1715 z-1. As such, they rent units in Uplands Apartments from defendants Community Services, Inc., Uplands Associates A, Uplands Associates B, and Morton Sarubin at an amount less than the fair market value of their units.

31. More particularly, defendant owners acting through their management agent defendant, Community Services, Inc., (agent) approved plaintiffs on the basis of their income as eligible tenants and entered into lease agreements with them.

32. Under the terms of these lease agreements, plaintiffs are to pay rent at the rate less than the fair market value of units comparable to theirs on the open market. Based upon information and belief, the difference be-

tween the amount of rent plaintiffs pay and the fair market value of their units when spread over the life of the mortgage represents a value to each plaintiff exceeding ten thousand dollars ($10,000.00).

33. On or about March 28, 1975, defendants Community Services, Inc., Uplands Associates A, Uplands Associates B and Morton Sarubin, acting through their management agent, Community Services, Inc., notified plaintiffs that their rents would be increased 18%, effective May 1, 1975.

34. Neither the Defendant Secretary, Carla A. Hills nor the other public defendants, have established an initial operating expense level for the Uplands Section 236 project, as required by Section 212(f)(3) and (g) of the Housing and Community Development Act of 1974 [5] (12 U.S.C. § 1715 z-1(f)(3) and (g)) to have been done "not later than 180 days after 8/22/74" (to wit: 2/18/75).

35. Nor has the Defendant Secretary or the other public Defendants made "additional assistance payments to the project owner in an amount up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level", as required by Section 212(f)(3) of the HCDA 1974 (12 U.S.C. § 1715 z-1(f)(3)), which payments would have obviated the need for the rental increases unlawfully approved by said Defendants.

36. Nor has the Defendant Secretary or the other public Defendants allocated the rental charges, collected from the project owner in excess of the basic rental charges, back to the project owner as additional assistance payments to offset the increased cost of utilities and local property taxes, as required by Section 212(g) of the HCDA 1974 (12 U.S.C. § 1715 z-1(g)), which payments would also have obviated the need for the rental increase unlawfully approved by said Defendants.

37. Nor has the Defendant Secretary or the other public Defendants complied with the Appropriations Act for the Department of Housing and Urban Development [6]

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[5] HCDA 1974, PL 93-383, 93rd Cong. S. 3066, August 22, 1974.

[6] Pub. L. 93-414, 93rd Cong., H.R. 15572 (Sept. 6, 1974).

which states that funds for the administration of housing production and mortgage credit may not be used for the Section 23 (leased public housing program) or any replacement program (i.e. Section 8) "unless the available, unused balance of contract authority under the Section 236 program, or any replacement program, is made available for commitment concurrent with the making available for commitment of any contract authority under the Section 23 program, or any replacement program".

38. As a result of the private Defendants' failure to apply for the additional assistance payments specified in paragraphs 29 and 30, supra, and as a result of the public Defendants' failure to allocate said additional assistance payments to the project owner, the Plaintiffs and the members of their class have been and are being denied the very benefits which Congress provided in the Housing and Community Development Act of 1974 and the Appropriation Act thereto; that is, the Plaintiffs are being compelled to pay an 18% rent increase authorized by the public Defendants ostensibly because of the project owners' increased utility costs and property taxes,[7] when funds have been appropriated by Congress and made available to the Secretary for the very purpose of offsetting these costs and protecting the tenants against the consequent need for such rent increases.[8]

39. By reason of the public Defendants' arbitrary refusal to apply the aforementioned additional assistance payments to the private Defendants' increased operating costs and by reason of the private Defendants' failure to apply for these assistance payments, the Plaintiffs and their class are being subjected to an unlawful rent increase on 5/1/75 which they cannot afford to pay, and are consequently threatened with imminent eviction from their low cost apartment units, all of which actions are causing them to suffer immediate and irreparable loss and injury.

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[7] See letter from Eugene R. Henderson to Community Services, Inc. dated 3/28/75, attached hereto as Exhibit A and incorporated herein by reference.

[8] See S.R. No. 693 U.S. Cong. News—1974, Pp. 3809, 3810, 3881.

VII.

Cause of Action

40. The actions of the private Defendants in applying for, and the federal Defendants in approving rent increases without first utilizing the additional assistance payments provided specifically by Congress to offset the increased operating costs (which have purportedly given rise to the need for the rental increase) have deprived Plaintiffs of their rights under Section 212(f) and (3) and (g) of the Housing and Community Development Act of 1974 (12 U.S.C. § 1715 z-1(f)(3) and (g)).

41. Defendants' actions violated plaintiffs' rights under said act in that the act was intended to benefit plaintiffs and their class by providing decent housing to low income people. Plaintiffs are low income people within the meaning of the statute and defendants' actions adversely affect plaintiffs' ability either to remain in the project or if they remain require them to spend a higher amount of their disposable income on rents, a result inimical to the purpose and interest said statute seeks to protects.

VIII.

Relief

WHEREFORE, plaintiffs on behalf of themselves and the class they represent pray this Court to:

A. General

Enter its judgment assuming jurisdiction of this matter and declaring this to be a class action and further declaring plaintiffs to be appropriate representatives of the class.

B. Illegal Rent Increases

Enter judgment declaring the rent increases the private defendants put into effect and the federal defendants approved to be illegal and that said defendants have violated plaintiffs' rights under the National Housing and Community Development Act of 1974.

C.

Enter its order declaring that the federal Defendants owe a duty to Plaintiffs under Sections 212(f)(3) and (g) of the Housing and Community Development Act of 1974 to provide additional assistance payments to the private Defendants in sufficient sums to offset the true increase in operating costs above the initial operating expense level.

D.

Enter a preliminary injunction restraining the private Defendants and all their agents, successors, employees, attorneys, and those acting in concert with them and at their direction from imposing and collecting a rent increase from the Plaintiffs and their class pending the final disposition of this case on the merits.

E.

Enter a preliminary injunction or execute an immediate writ of mandamus directing the federal Defendants to rescind their approval of the rent increase applicable to the Plaintiffs on and after 5/1/75.

F.

Execute a writ of mandamus compelling the federal Defendants to provide and continue to provide the additional assistance payments to the private Defendants so as to offset the increase in operating costs above the initial operating expense level.

G.

Enter a permanent injunction against the private Defendants and their agents, successors, employees and attorneys, restraining them from collecting from, seeking to collect from, seeking to evict or evicting the Plaintiffs and their class for failing to pay any rental increase at the Uplands Apartments until the additional assistance payments provided by the Housing and Community Development Act of 1974 have been applied for and exhausted.

H.

Enter its order assessing the costs of this proceeding against the Defendants and order such further relief as the Court deems just in the premises.

/s/ Lawrence B. Coshnear
LAWRENCE B. COSHNEAR
Legal Aid Bureau, Inc.
341 North Calvert Street
Baltimore, Maryland 21202
PHONE: 539-5340

/s/ H. Robert Erwin, Jr.
H. ROBERT ERWIN, JR.
Legal Aid Bureau, Inc.
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/s/ Gerald Walsh
GERALD WALSH
Legal Aid Bureau, Inc.
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. H-75-506

[Filed 26 June, 1975]

BARBARA ROSS, et al., PLAINTIFFS

v.

COMMUNITY SERVICES, INC., et al., DEFENDANTS

ANSWER OF FEDERAL DEFENDANTS

Come now the Federal Defendants Carla A. Hills, H. R. Crawford and Everett H. Rothschild, for their answer and admit, deny and allege as follows:

1. Federal Defendants admit that an Appropriations Act (Pub. L. 93-414) was signed into law on December 27, 1974. The remaining allegations of paragraph 1 of the complaint contain conclusions of law to which no answer is required; to the extent that an answer is deemed to be required, it is denied.
2. Paragraph 2 of the complaint does not require a response. To the extent that it is deemed to require an answer, it is denied.
3. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.
4. Paragraph 4 of the complaint is admitted.
5. Federal Defendants admit the first sentence but deny the second sentence of paragraph 5 of the complaint.
6. Federal Defendants admit that the Secretary of Housing and Urban Development (HUD) is required to establish a reserve fund from all rentals collected

in excess of basic rental charges but deny all remaining allegations contained in paragraph 6 of the complaint.

7. Federal Defendants are without knowledge or information sufficient to form a belief as to whether plaintiffs will be evicted. Federal Defendants deny the remaining allegations of paragraph 7 of the complaint.

8. Paragraph 8 of the complaint contains legal conclusions to which no answer is required; to the extent that an answer is deemed to be required, it is denied.

9. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the complaint.

10. Paragraph 18 of the complaint is admitted.

11. Paragraph 19 of the complaint is admitted.

12. Paragraph 20 of the complaint is admitted.

13. Defendants deny the last sentence of paragraph 21 of the complaint but admit the remaining allegations contained therein.

14. Paragraph 22 of the complaint is admitted.

15. Paragraph 23 of the complaint is denied.

16. Paragraph 24 of the complaint is admitted.

17. Federal Defendants deny that defendants Crawford and Rothschild can be sued in their official capacities. Federal Defendants admit the remaining allegations contained in paragraph 25 of the complaint.

18. Paragraph 26 of the complaint contains conclusions of law to which no answer is required; to the extent that an answer is deemed to be required, it is denied.

19. Federal Defendants admit that HUD has prescribed certain requirements with respect to the operation of low income housing under 12 U.S.C. 1715z-1 and, furthermore, has entered into a regulatory agreement with the private defendants as alleged in para-

graphs 27, 28 and 29 of the complaint. Federal Defendants affirmatively aver that such requirements and the regulatory agreement are not fully set forth in the complaint and, furthermore, speak for themselves

20. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 30 and 31 of the complaint.

21. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 32 of the complaint. Federal Defendants deny the second sentence of paragraph 32.

22. Federal Defendants admit paragraph 33 of the complaint.

23. Federal Defendants admit that an operating expense level has not been established but deny the remaining allegations of paragraph 34 of the complaint. Federal Defendants affirmatively aver that steps are being taken to establish an operating expense level for the Uplands Apartments pursuant to this Court's order.

24. Federal Defendants affirmatively aver that they have made payments to the private defendants for the months of May and June, 1975, pursuant to this Court's order. Federal Defendants deny the remaining allegations of paragraph 35 of the complaint.

25. Federal Defendants admit that payments for increased property taxes and utility costs had not been made from the reserve fund established under 12 U.S.C. 1715z-1(g). Federal Defendants deny the remaining allegations of paragraph 36 of the complaint.

26. Federal Defendants deny paragraphs 37, 38, 39, 40 and 41 of the complaint.

27. Federal Defendants deny each and every allegation of the complaint not hereinbefore specifically admitted.

First Affirmative Defense

28. Federal Defendants affirmatively allege that plaintiffs have failed to state a claim upon which relief may be granted.

Second Affirmative Defense

29. Federal Defendants affirmatively allege that this Court lacks jurisdiction over Defendants Crawford and Rothschild because they cannot be sued in their official capacities.

Wherefore, Federal Defendants pray:

(A) That this Court dismiss the complaint with prejudice.

(B) That plaintiffs be assessed the costs of this litigation.

(C) For such other and further relief as this Court deems just and equitable.

Respectfully submitted,

/s/ Rex E. Lee
REX E. LEE
Assistant Attorney General

/s/ Jervis S. Finney
JERVIS S. FINNEY
United States Attorney

/s/ Virginia S. Draper
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/s/ Stanley D. Rose
STANLEY D. ROSE

/s/ David Epstein
DAVID EPSTEIN

/s/ Paul T. Michael
PAUL T. MICHAEL

Attorneys, Department of Justice
Washington, D.C. 20530
(202) 739-4302
Attorneys For Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify the copies of the foregoing Answer of Federal Defendants were served upon the following persons:

Mr. Lawrence Coshnear
Legal Aid Bureau, Inc.
341 North Calvert Street
Baltimore, Maryland 21202
Attorney For Plaintiffs

Mr. Mark K. Joseph
Gallagher, Evelius & Jones
1100 One Charles Center
Baltimore, Maryland 21201
Attorney For Private Defendants

Dated: June 25, 1975

/s/ Paul T. Michael
PAUL T. MICHAEL
Attorney For Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. H-75-506

[Filed 19 May, 1975]

BARBARA ROSS, et al., PLAINTIFFS

vs.

COMMUNITY SERVICES, INC., et al., DEFENDANTS

ORDER

Upon consideration of the briefs filed in the instant case and the oral arguments of counsel for all parties hereto and the Court having made certain findings of facts and conclusions of law under F.R. Civ. P., Rule 52, which findings and conclusions are filed separately from this ORDER, and the Court having concluded that a preliminary injunction should be entered pending further proceedings in this case, it is this 19th day of May, 1975,

ORDERED THAT

1) The class of persons herein which plaintiffs represent is certified as those tenants of the Uplands Apartment Complex (Uplands) whose incomes do not exceed eighty (80%) perecent of the median income for the Baltimore SMSA and whose HUD approved basic rents on May 1, 1975, exceed thirty (30%) percent of their adjusted gross income being those four hundred and twenty-four (424) tenants listed on Exhibits A and B attached hereto;

2) The federal defendants herein as promptly as possible determine: (a) the initial operating expense level for the Uplands Apartments Complex (Uplands) at the time the property became fully occupied, taking into account customary vacancy rates; and (b) that portion of the increases in rentals approved by HUD attributable

to the excess of the sum of the cost of utilities and local property taxes over the initial operating expense level;

3) Pending the determinations required in paragraph 2 here of, the class of persons herein and HUD, respectively, each shall immediately pay to the Uplands one-half (½) of the rental increase effective May 1, 1975; and

FURTHER ORDERED

This Court will retain jurisdiction over the parties herein to insure that this Order is properly effectuated.

/s/ Alexander Harvey II
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. H-75-506

BARBARA ROSS, et al., PLAINTIFFS

v.

CARLA A. HILLS, et al., DEFENDANTS

AFFIDAVIT OF CARLA HILLS

Carla A. Hills, being duly sworn, deposes and says:

1. I am the Secretary of the Department of Housing and Urban Development. All of the functions, powers and duties of the Department, including those powers conferred by Section 236 of the National Housing Act, as amended, are vested in the Secretary. 12 U.S.C. 1702.

2. It is the purpose of this affidavit to inform the Court of the basis of my decision not to implement the statutory authority to make operating subsidy payments to the owners of projects insured under Section 236 of the National Housing Act, as amended, for this fiscal year.

3. Section 236(f)(3) of the National Housing Act, as amended, authorizes the Secretary to enter into contracts to make operating subsidy payments to the owners of Section 236 projects. It also provides the Secretary with the authority to make operating subsidy payments when they become due under the terms of these contracts. The dollar amount of contracts authorized to be entered into under this grant of authority, however, is limited by the amount of unreserved contract authority released by Congress for purposes authorized by Section 236. By releasing such contract authority in appropriation acts, Congress places a statutory ceiling on the dollar amount of contracts to make future payments which may be entered into by the Secretary.

4. As of September 30, 1975, the most recent date for which figures are available, the Department had an unreserved balance of contract authority in an amount aggregating $97,824,746 for contracts authorized by Section 236 of the National Housing Act, as amended. However, this total includes $7,067,256 in program reservations which had been made but not formally recorded on the Department's accounting records. Therefore, as a realistic matter, the Department had available Section 236 contract authority aggregating only $90,757,490 on that date. Under the terms of Section 236 of the National Housing Act, as amended, this unreserved balance could be utilized for three distinct purposes:

a) contracts for interest reduction payments authorized by Section 236(a), as amended;

b) contracts for deep subsidy payments authorized by Section 236(f)(2), as amended; and

c) contracts for operating subsidy payments authorized by Section 236(f)(3) and (g), as amended.

5. The cost of implementing each of these programs has been estimated by the Department as follows:

A. *Cost of Implementing the Interest Reduction Program*

Interest reduction payments authorized by Section 236(a) of the National Housing Act, as amended, are periodic subsidy payments made by the Department to mortgagees in order to reduce the mortgagor's (Section 236 project owner's) interest costs on a market-rate FHA-insured project mortgage. The interest subsidy, in turn, makes possible lower rentals to be paid by the project's tenants. Prior to January 5, 1973, the date of the Department's suspension of the Section 236 interest reduction program, the Department represented to certain entities, such as State and local governments, regional councils of government, local urban renewal, redevelopment or model cities authorities, developers of federally

assisted new community projects, and the military, that it would enter into contracts with such entities for interest reduction payments on projects which were then being developed. Such entities proceeded with the preparation of plans for projects in reliance on these representations. After the program suspension in January of 1973, the Department announced that it would honor these promises which it termed "bona fide commitments." Among the proposed projects which received bona fide commitments are those necessary to provide needed housing for the elderly, for disaster victims, for areas determined to have a substantial need for accommodations for military personnel, for federally assisted new community projects, and to meet the statutory relocation housing requirement for urban renewal areas. I am informed that failure by the Department to honor such bona fide commitments would create chaotic conditions for such entities, which, in reliance upon the Department's representations, have expended funds in preparation for the development of a project. I am also informed by my staff that these difficulties would be compounded in instances where the development of such projects is necessary to meet the low cost housing, relocation or other program requirements for federally assisted urban renewal, model cities or new community activities. The Department has estimated, on the basis of a project-by-project count, that the total cost of honoring outstanding bona fide commitments is $48.6 million. This estimate was based upon the following data:

1) Bona fide commitments to 38 State-aided Section 236 projects, comprising some 13,563 units, are currently outstanding. The cost of making interest reduction payments on behalf of these projects, based upon current figures concerning

the mortgage amount for each project, amounts to $37,965,201;

2) Bona fide commitments to 56 non-State-aided Section 236 projects, comprising some 7,397 units, are currently outstanding. The cost of making interest reduction payments on behalf of these projects, based upon current figures concerning the mortgage amount for each project, amounts to $10,673,871.

The Department therefore has set aside and intends to utilize $48.6 million of the unreserved balance of Section 236 contract authority for bona fide commitments.

In addition to its obligation to honor outstanding bona fide commitments, the Department has entered into agreements with housing finance agencies the effect of which is to amend contracts for interest reduction payments on new Section 236 projects by increasing the amount of the interest reduction subsidy. Approximately two-thirds of these amendments will be made on behalf of projects assisted by State governments. Such amendments became necessary when the construction, debt service or other development costs of the sponsor exceed those estimated at the time that a fund reservation is made for the project. Where such increased costs lead to an increase in the principal or interest on the project mortgage, an increase in the amount of the interest reduction subsidy is necessary to insure the project's feasibility. These agreements to amend outstanding contracts under certain conditions constitute agreements to reserve contract authority and utilize it for such amendments.

The Department estimates the cost of outstanding amendments to contracts for interest reduction payments at $10.3 million. This estimate is based upon the following data:

1) There are currently outstanding 99 agreements between HUD and State-aided Section 236 projects to amend each project's contract for interest reduction payments. The sum of the cost of these 99 amendments amounts to $4,682,463;

2) In addition to the amendments on State-aided projects, the Department has agreed to amend contracts for interest reduction payments on non-State-aided projects. The current average cost of these amendments is $1.9 million quarterly. Based upon this figure, the estimated cost of these amendments for the balance of Fiscal Year 1976 (9 months) amounts to $5.7 million.

In order to meet its commitments under these agreements, the Department will utilize $10.3 million of the unreserved balance of Section 236 contract authority.

B. *Costs of Implementing the Deep Subsidy Program*

Section 236(f)(2) of the National Housing Act, as amended, directs the Secretary to make so-called deep subsidy payments with respect to 20 percent of the dwelling units in any project assisted under a contract with the Department executed after August 22, 1974, the date of enactment of the Housing and Community Development Act of 1974. The minimum cost of making such deep subsidy payments, pursuant to the requirements of Section 236(f)(2) of the National Housing Act, as amended, has been estimated at $29 million for the balance of Fiscal Year 1976, and the transition quarter which ends September 30, 1976. This estimate is based upon the following data:

1) There are currently 69,753 Section 236 units which were not placed under con-

tract with the Department on or before August 22, 1974;

2) The Department estimates that the families occupying 30 percent of the Section 236 units nationwide will be eligible for deep subsidy payments. This 30 percent figure represents the average of: (1) the statutory requirement that 20 percent of the units in each Section 236 project be eligible for deep subsidy payments; and (2) the statutory authority, which the Department has exercised, to increase the 20 percent requirement to meet the housing needs of elderly families. Forty percent of the units in elderly projects will be eligible for deep subsidy payments.

3) The current average per unit cost of making deep subsidy payments amounts to $1,700 annually.

Therefore, in order to make the required deep subsidy payments for the balance of Fiscal Year 1976, and in the transition quarter, my staff informs me that the Department will utilize $29 million of the unreserved balance of Section 236 contract authority. In the event that the Department exercises the authority, set forth in Section 236(f)(2)(A) and (B), as amended, to increase further the percentage of units in each project eligible for deep subsidy payments, an amount in excess of $29 million will be necessary to implement the deep subsidy program.

In addition to this sum, I am told that the Department will utilize $2.9 million of Section 236 contract authority to make deep subsidy payments to projects which had received a commitment by the Department for interest reduction payments prior to August 22, 1974, but which were not finally endorsed nor receiving interest reduction payments until after that date. An amount in

excess of $2.9 million is estimated to be required for a full implementation of the deep subsidy program for these projects. However, the Department's balance of unreserved Section 236 contract authority will aggregate only $2.9 million after $48.6 million is utilized for bona fide commitments, $10.3 million is utilized for amendments to contracts for interest reduction payments, and $29 million is utilized for deep subsidies. Since the total unreserved balance is $90.8 million, the only balance remaining to complete implementation of the deep subsidy program is $2.9 million.

C. *Costs of Implementing the Operating Subsidy Program*

After the enactment of the Housing and Community Development Act of 1974, on August 22, 1974, former Secretary of the Department of Housing and Urban Development James T. Lynn requested that the Department estimate the cost of implementing the operating subsidy program for Fiscal Years 1975 and 1976. Thereafter, a nationwide survey was conducted by the Department's Office of Loan Management in order to develop the required cost estimates for implementation of the program. This survey covered one-third of the universe of Section 236 projects nationwide. On the basis of the financial information obtained as a result of this survey, the Department estimated that it would cost $2,717,000 per month to implement the operating subsidy program in Fiscal Year 1975, and $4,289,000 per month to implement that program in Fiscal Year 1976.

On the basis of this estimate, my staff informs me that the operating subsidy program for Fiscal Year 1976 would require an amount aggregating approximately $51.4 million. The Department would require for that purpose $51.4 million of the unreserved balance of Section 236 contract

authority. Furthermore, since the costs of implementing the operating subsidy program will accelerate each year due to the general inflation in property taxes and utility costs, the Department will require contract authority greatly in excess of $51.4 million to implement that program in subsequent fiscal years.

6. In Fiscal Year 1975 and thus far in Fiscal Year 1976, the Department utilized its unreserved balances of Section 236 contract authority to meet bona fide commitments to make interest reduction payments, amendments to contracts for interest reduction payments, and for contracts to make deep subsidy payments. The current unreserved balance of Section 236 contract authority has been programmed for the same purposes.

7. The sum of $90.8 million of unreserved Section 236 contract authority is not sufficient to permit the Department to contract to cover the estimated costs of implementing the interest reduction, deep subsidy and operating subsidy programs for the current fiscal year. The estimated cost of such an implementation exceeds $142 million. The $90.8 million of unreserved Section 236 contract authority will be exhausted by the Department in meeting its obligations to honor bona fide commitments to make interest reduction payments, to amend contracts for interest reduction payments, and to make deep subsidy payments. In light of the insufficiency of the Department's unreserved balance of Section 236 contract authority to implement all of the programs authorized by Section 236 of the National Housing Act, as amended, and upon the basis of staff analysis, I have determined that it is not feasible to implement the operating subsidy program for this fiscal year.

8. Although the Department cannot implement the operating subsidy program for this fiscal year, it will continue to take actions designed to alleviate the financial difficulties which motivated Congress to enact the operating subsidy amendments to Section 236 of the National Housing Act. The operating subsidy amendments were enacted to alleviate the financial hardships, generated by

escalating utility rates and tax increases, which threaten the owners of HUD subsidized, multifamily projects and the tenants residing in those projects.

The Department has considered a number of alternative solutions to these financial problems and has begun to implement some of them. For example,

a) Since February 1975, the Department has been operating under a moratorium on foreclosures of certain subsidized multifamily projects;

b) Relief procedures, such as modification and suspension of the requirement that project owners maintain a reserve for replacement, have been liberalized;

c) Owners of Section 236 projects, in computing excess income which must be paid to HUD and placed in the reserve fund, are permitted to deduct rents determined to be uncollectible and rent losses on unoccupied units; and

d) A system has been instituted to alert HUD field office personnel of possible or pending defaults so that action to avoid the default can be taken before it occurs.

In addition to these actions, the Department has proposed and is preparing to implement a plan to allocate Section 8 subsidies, authorized by the Housing and Community Development Act of 1974, to those FHA-insured projects which are in danger of defaulting on their mortgage obligations. Such an allocation will assist occupants of Section 236 projects and other FHA-insured projects who, because of insufficient income, are unable to pay the rent required to support the project. The families occupying units in Section 236 projects which receive the benefit of Section 8 assistance will pay no more than 15 to 25 percent of their adjusted income toward rent. The balance of the approved rent for the unit will be paid to the project owner in Section 8 subsidies. No Section 236 contract authority will be required for

implementation of this plan which will begin in this fiscal year.

9. In light of my determination that it is not feasible to implement the operating subsidy program for this fiscal year, I have not instructed HUD field office personnel to begin calculating the initial operating expense levels for Section 236 projects nationwide. These calculations would necessitate the expenditure by the Department of a great deal of time, effort and funds and, absent an ability to implement the operating subsidy program would have no effect whatsoever upon the financial difficulties facing HUD-subsidized multifamily projects. Moreover, at any time that a decision is made by the Department to implement the operating subsidy program, the calculation of the initial operating expense levels can be made with no prejudice or resultant hardship to those projects eligible for such payments.

In light of the insufficiency of the Department's unreserved balance of Section 236 contract authority to implement all of the programs authorized by Section 236 of the National Housing Act, as amended, and the actions taken by the Department to alleviate the financial difficulties facing the owners and tenants of HUD-subsidized multifamily projects, it is my judgment that the utilization of available Section 236 contract authority for bona fide commitments, amendments to contracts for interest reduction payments, and deep subsidy payments, to the exclusion of operating subsidies, is in the national interest and is required to meet the Department's outstanding

obligations and commitments under Section 236 of the National Housing Act, as amended.

/s/ Carla A. Hills
CARLA A. HILLS
Secretary

Subscribed and sworn to before me this 29th day of December, 1975.

/s/ Patricia A. Gifford
Notary Public

My Commission Expires Jan. 31, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. H-75-506

[Received May 12, '75, 4:50 PM]

BARBARA ROSS, et al., PLAINTIFFS

vs.

COMMUNITY SERVICES, INC., et al., DEFENDANTS

AFFIDAVIT OF H. R. CRAWFORD

H. R. Crawford, being duly sworn, deposes and says:

1. I am the Assistant Secretary for Housing Management of the Department of Housing and Urban Development (HUD), and as such, I have responsibility pursuant to a delegation of authority from the Secretary published at 36 F.R. 5005, as amended, for all housing management functions of HUD, including all management activities under the National Housing Act, as amended:

2. The Department is extremely concerned with the problems threatening the economic viability of HUD insured and subsidized multifamily housing projects as well as the financial burdens imposed upon the low- and moderate-income tenants of these projects who must pay higher rents to meet the continuing rise in operating costs. Sharp rises in property taxes, utility rates and the cost of other goods and services essential to the operation of multifamily housing projects have brought about an alarming acceleration in the rate of defaults in mortgage payments by the owners of such projects. It is the position of the Department that a broad strategy, which will address itself to the problems of all HUD assisted multifamily projects, is necessary to alleviate what has become a financial crisis.

3. The operating subsidy provisions of Section 212 of the Housing and Community Development Act of 1974

is an attempt by the Congress to address the problem of increased operating costs in Section 236 projects by providing additional subsidies to the project owner. However, Section 212 does not authorize additional assistance for HUD assisted multifamily projects insured under other sections of the National Housing Act which face identical problems.

4. Section 212 of the Housing and Community Development Act of 1974 authorizes the payment of operating subsidies to Section 236 project owners only to the extent necessary to maintain the basic rental charges for tenants at levels not in excess of 30 percent of their gross income. Therefore, the benefit of operating subsidies flows only to those Section 236 projects which are occupied by tenants whose basic rental charge exceeds 30 percent of their gross income. There are Section 236 projects in which a majority or all of the tenants occupying its units pay a rental charge which does not exceed 30 percent of their gross income. Consequently, the payment of operating subsidies will have little or no ameliorating effect upon the economic difficulties threatening the owners of a number of Section 236 projects.

5. The payment of operating subsidies solely to Section 236 project owners, therefore, is inequitable in providing relief only to a small proportion of HUD assisted multifamily projects and to an even smaller group of beneficiaries—those owners of Section 236 projects whose tenants have a basic rental charge exceeding 30 percent of gross income. In view of the need for a general multifamily default policy which will address itself to the economic difficulties facing owners and tenants of all HUD assisted multifamily projects, the Department is currently considering a number of alternative proposals for solutions that are more comprehensive and more equitable.

6. There are two basic approaches to affect the cash flow problems facing multifamily projects without raising the rental charges that the tenants must pay. The first is to provide additional subsidies for the projects to increase operating income. This approach does not

affect the amount of the mortgagor's debt service payments. The other option is to decrease the debt service on the mortgage thereby freeing additional income for the operation of the project. There are a number of alternative methods to achieve the goals of each of these options. Some of the alternatives currently being considered by the Department are as follows:

(a) A policy whereby mortgages are assigned to HUD and then recast to require a payment of principal and interest based upon current and foreseeable project income. The balance of the principal would not become due until the expiration date of the original indebtedness;

(b) A policy whereby Section 8 units, authorized by the Housing and Community Development Act of 1974, would be allocated to distressed multifamily projects, thereby providing a base of rental income for the project which would rise with inflationary cost increases as they are sustained, and not affect the rent the tenants must pay;

(c) A policy which permits Section 236 project owners to offset rents collected in excess of the basic rental charge against uncollected rents as a cushion against increased operating costs. Consideration is also being given to making this procedure retroactive for the excess rental collections which have been remitted to HUD pursuant to Section 236(g) of the National Housing Act, as amended;

(d) A policy permitting extensions in the maturity date of the mortgage, thereby decreasing the project's debt service payments;

(e) A policy which permits the transfer of nonprofit projects to limited distribution ownership to improve management, i.e., management which is motivated by existing benefits available to owners of subsidized projects;

(f) A policy which authorizes an increase in the tenant income limits for subsidized projects which, coupled with the increased use of rent supplements, would provide an increase in rental income while at the same time cushioning the impact of increased operating costs on lower income tenants; and

(g) A legislative proposal to permit payment of a partial insurance claim (out of the insurance fund established by Section 238 of the National Housing Act, as amended) to the project owner which would reduce his mortgage indebtedness to a monthly amortization which he can afford to pay out of current income. A second note mortgage for the amount of the insurance claim paid would be held by HUD and be repayable under terms consisting of favorable interest rates and a deferred start of amortization.

7. As is set forth in the Affidavit of Jack A. Meyer, a *Multifamily Defaults Study* was undertaken within the Department at the request of former HUD Secretary James T. Lynn. This study probed many of the alternatives currently being considered by the Department to alleviate the default problem in HUD-assisted multifamily projects and evaluated the potential effectiveness of each alternative proposal. In addition, the Department helped launch a $700,000 research and demonstration effort to gain new insight and answers to problems besetting some 60 financially troubled multifamily housing projects in the New York City area. These projects contain 16,500 dwelling units and represent mortgages totaling almost $370 million.

8. Earlier in the year, the Department announced a temporary suspension of further referrals to the Department of Justice of addditional foreclosures of HUD subsidized multifamily projects owned by nonprofit and limited dividend mortgagors, except in the case of abandonment or similar circumstances. In an effort to obtain the views of all interested public and private sources concerning HUD's policies on defaults in all HUD sub-

sidized multifamily projects and the impact of defaults upon the low- and moderate-income tenants residing in such projects, the Department held public hearings on May 5 and 6, 1975. These hearings were designed to solicit the proposals of tenant groups, project owners and other representatives of the community at large on alleviating the default problem so that these proposals can be added to those currently being considered by the Department.

9. While the Department is engaged in examining the potential effectiveness of alternative proposals designed to alleviate the financial difficulties of all HUD insured and subsidized multifamily projects and the adverse impact of these difficulties upon the tenants of such projects, it has no plans to implement the provisions of Section 236(f)(3) and (g) of the National Housing Act, as amended, which authorize the payment of operating subsidies to Section 236 project owners. It is the position of the Department that the alternative proposals currently being considered provide a broader approach to the economic difficulties threatening multifamily project owners as well as the tenants of such projects.

10. Secretary Hills, Under Secretary Mitchell and I appeared before the Senate Committee on Appropriations on April 21 and 22, 1975. At these hearings, the intent of the Department not to implement the statutory authority to pay operating subsidies to Section 236 project owners, at this time, was made clear to the committee. The committee was concerned with options being considered by the Department to alleviate the multifamily default problem as well as the financial difficulties threatening the tenants of these projects. The Secretary, the Under Secretary and I discussed some of the alternatives being considered by the Department as well as some of the methods proposed for their implementation. I also appeared before the Subcommittee on HUD and Other Independent Agencies of the House Committee on Appropriations at hearings held on April 14 through 18, 1975. At these hearings, the Subcommittee was informed of the Department's intent with respect to the implementation of the statutory authority to pay operat-

ing subsidies under the Section 236 program. Departmental spokesmen will continue to keep those committees fully informed concerning the progress made in the development of alternative solutions and the possible need for legislation in this area.

/s/ H. R. Crawford
H. R. CRAWFORD
Assistant Secretary
for Housing Management

Subscribed and sworn to before me on this 9th day of May, 1975.

[SEAL]

/s/ Julius M. Williams
Notary Public
My Commission expires 7/14/76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. H-75-506

[Received May 12, '75, 4:50 PM]

BARBARA ROSS, et al., PLAINTIFFS

vs.

COMMUNITY SERVICES, INC., et al., DEFENDANTS

AFFIDAVIT OF ALBERT J. KLIMAN

Albert J. Kliman, being duly sworn, deposes and says:

1. I am the Director of the Office of Budget of the Department of Housing and Urban Development. In that capacity I serve as the adviser to and representative of the Assistant Secretary for Administration in matters relating to budget formulation and execution, and as adviser to the Secretary and Under Secretary with respect to these matters. I am responsible for the development of budget plans, policies and procedures, and for the overall supervision of the Office of Budget. The principal responsibilities of the Office of Budget are:

(a) To advise the Assistant Secretary for Administration and other high level officials of the Department including the Secretary and Under secretary on budget matters, including the budgetary implications of policy and legislative proposals;

(b) To advise Assistant Secretaries and staff officers on their budgetary responsibilities, to evaluate the effectiveness of these activities and to exercise technical and functional supervision with respect to all budget activities throughout the Department; and

(c) To prepare or review all consolidated or Department-wide budget estimates for submission to Office of Management and Budget and the Congress.

2. It is the purpose of this affidavit to state the manner in which the Congress has made available contract authority and appropriated funds to carry out the provisions of Section 236 of the National Housing Act, as amended. It is also the purpose of this affidavit to state how the Department has programmed the unreserved balance of contract authority made available by Congress to carry out the Section 236 program.

3. "Contract authority," as used in this affidavit, refers to the means by which contracts are entered into under statutory authority which provides for a commitment of Federal fund payments, now and in the future, up to a stipulated limit, prior to an apropriation of funds for the liquidation of such contracts. With respect to the Section 236 program, contract authority permits the Department to enter into contracts to make annual payments, such as interest reduction payments, which are authorized by Section 236 of the National Housing Act, as amended, for certain future periods. Congress makes contract authority available under the Section 236 program through a two step process. First, there must be an authorization of contract authority contained in the substantive legislation. Second, the contract authorization, or portion thereof, must be released to the Department in an appropriations act. The Department may then enter into contracts to make annual payments authorized by Section 236 up to the limit established in the appropriations act releasing such contract authority.

4. "Appropriation," as used in this affidavit, refers to an authorization in an appropriations act to draw funds from the Treasury for specified purposes and to make disbursements of these funds. With respect to the Section 236 program, appropriations provide the Department with funds to liquidate contracts for payments authorized by Section 236 of the National Housing Act, as amended, which were entered into pursuant to contract authority released by Congress for that purpose.

5. Congress has released no contract authority specifically for contracts for the payment of operating subsidies authorized by Section 236(f)(3) and (g) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974. Section 236(i) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974, authorized $75,000,000 of contract authority, subject to release in appropriations acts, to carry out the provisions of Section 236 of the National Housing Act, as amended, in Fiscal Year 1975. However, the Congress has released no contract authority pursuant to this authorization.

6. Although Congress has released no new contract authority for the Section 236 program, it has authorized the Department to use the contract authority it currently has available to carry out the provisions of Section 236 of the National Housing Act, as amended, to enter into contracts for the payment of Section 236 operating subsidies. See: Senate Report No. 93-1255, accompanying H.R. 16900, 93d Cong., 2d Sess., October 9, 1974, and H. Rpt. No. 93-1503, accompanying H.R. 16900, 93d Cong., 2d Sess., November 26, 1974.

7. As of July 1, 1974, the Department had an unreserved balance of contract authority in an amount aggregating $181,363,000 for contracts authorized by Section 236 of the National Housing Act, as amended. This unreserved balance has been programmed by the Department in the following manner:

(a) For Fiscal Year 1975

(1) $70 million for bona fide commitments to make interest reduction payments on new projects secured by mortgages insured under Section 236 of the National Housing Act, as amended. Bona fide commitments refer to promises made by the Department to enter into contracts for interest reduction payments on projects planned for the future, e.g., projects to be included in an urban re-

newal area in which development is not yet complete.

(2) $17.1 million for amendments to contracts for the payment of interest reduction payments on state-aided projects as authorized by Section 236(b) of the National Housing Act, as amended; and

(3) $21.1 million for the payment of "deep subsidies" mandated by Section 236(f)(2) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974.

(b) For Fiscal Year 1976

(1) $66.1 million for bona fide commitments to make interest reduction payments on new projects secured by mortgages insured under Section 236 of the National Housing Act, as amended; and

(2) $7.1 million for the payment of "deep subsidies" mandated by Section 236(f)(2) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974.

As is indicated above, the Department has programmed its entire unreserved balance of contract authority for purposes other than contracts for the payment of operating subsidies.

8. Section 236(g) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974, provides that Section 236 project owners shall periodically pay to the Secretary all rental charges collected in excess of basic rental charges and that these excess rental charges shall be placed in a reserve fund by the Secretary. This section goes on to state that the Secretary may use the excess rental charges in the reserve fund to make operating subsidy payments to project owners by crediting the reserve funds to the

appropriation authorized by Section 236(i), as amended. Section 236(i), as amended, in addition to authorizing appropriations to carry out the Section 236 program, provides that the Secretary has no more contract authority than that granted by appropriations acts. Therefore, the Department can use the $31,556,312 balance in the reserve fund for the payment of operating subsidies *only* to the extent that there exists sufficient unreserved contract authority released by Congress for that purpose. However, as is indicated in paragraph 7, the Department has programmed its entire unreserved balance of contract authority for purposes other than contracts for the payment of operating subsidies.

9. In Public Law 93-414, 93d Cong., 2d Sess., Congress appropriated $2,300,000,000 for payments authorized by Section 10 of the United States Housing Act of 1937, as amended, Title IV of the Housing Act of 1950, as amended, Section 101 of the Housing and Urban Development Act of 1965, as amended, and "for homeownership and interest reduction payments as authorized by Section 235 and 236 of the National Housing Act, as amended, ..."

Congress expressly limited the use of those funds appropriated by Public Law 93-414 for the Section 236 program to the payment of interest reduction payments as authorized by Section 236(a) of the National Housing Act, as amended. Therefore, none of the funds appropriated pursuant to Public Law 93-414 for the Section 236 program may be used for the payment of operating subsidies authorized by Section 236(f)(3) and (g) of the National Housing Act, as amended.

/s/ Albert J. Kliman
ALBERT J. KLIMAN
Director, Office of Budget

Subscribed and sworn to before me on this 9th day of May, 1975.

/s/ Bernard E. Banks
Notary Public
My Commission expires
June 30, 1976

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. H-75-506

BARBARA ROSS, ET AL., PLAINTIFFS

v.

COMMUNITY SERVICES, INC., ET AL., DEFENDANTS

AFFIDAVIT OF ROBERT C. ODLE, JR.

Robert C. Odle, Jr., being duly sworn, deposes and says:

1. I am the Acting Assistant Secretary for Housing Management of the Department of Housing and Urban Development (HUD). Pursuant to a delegation of authority published at 36 F.R. 5005, as amended, my responsibilities encompass all of the Department's housing management functions including all management activities under the National Housing Act.

2. The purpose of this affidavit is to supplement the Affidavit of Mr. Albert J. Kliman, previously submitted to the Court, with respect to the excess rental reserve fund established by Section 236(g) of the National Housing Act, as amended. It is also the purpose of this affidavit to bring to the Court's attention the facts surrounding the Department's decision to refund to certain owners of projects insured under Section 236 of the National Housing Act, a substantial portion of the sums previously derived from them and previously credited to the excess rental reserve fund established by Section 236(g) of the National Housing Act, as amended.

3. The Affidavit of Mr. Kliman stated that the excess rental reserve fund contained $31,556,312.00 at the time such affidavit was submitted to this Court. As of October 31, 1975, the excess reserve fund contained $40,647,789.00. No mention was made in Mr. Kliman's Affidavit of a potential charge upon the balance in the

excess rental reserve fund. The potential charge on the excess rental reserve fund is explained below.

4. Section 236 was added to the National Housing Act in 1968 to encourage private enterprise to engage in the development of good rental and cooperative housing for lower income families. It authorizes the provision of mortgage insurance and assistance in the form of periodic subsidy payments to an eligible mortgagee in order to reduce the mortgagor's interest costs on a market rate FHA-insured project mortgage down to one percent per annum. The interest subsidy, in turn, makes possible lower rentals to be paid by those occupants who qualify for Section 236 assistance. The rent a tenant must pay is derived through the use of two principles: The "basic rental charge" and the "fair market rental charge". The former is determined on the basis of operating the project with payments of principal and interst due under a mortgage bearing interest at the rate of 1 percent per annum. The latter is determined on the basis of operating the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage.

A qualified tenant must pay the "basic rental charge" or 25 percent of his adjusted income, whichever is greater. However, in no case will a tenant's rental payment exceed the "fair market rental charge".

5. Prior to the 1974 amendments to Section 236, Section 236(g) provided that project owners, "shall, as required by the Secretary, accumulate, safeguard, and periodically pay to the Secretary all rental charges collected in excess of the basic rental charges. Such excess charges shall be deposited by the Secretary in a fund which may be used by him as a revolving fund for the purpose of making interest reduction payments. . . ."

6. This statutory requirement was inserted into the "regulatory agreement" which constitutes a contract between HUD and the project owner (mortgagor) for Section 236 assistance. Each regulatory agreement provides in pertinent part that the project owner shall remit each month to the Department, together with the appropriate reporting form, the amount by which the total rentals

collected on the dwelling units exceed the sum of the approved basic rentals for all occupied units. Project owners are required to remit excess rentals to the Department along with HUD Form 3104, "Monthly Report of Excess Income" (Exhibit A). Instructions for calculating such excess rents were set forth in HUD's Insured Project Servicing Handbook.

7. In the latter part of 1973, it came to the attention of HUD's Office of Loan Management, the office responsible for implementing Section 236(g), that a great deal of uncertainty existed on the part of Section 236 project owners concerning the computation of excess rentals. After a review, which began in early 1974, the Office of the Assistant Secretary for Housing Management determined that the manner in which most project owners were computing excess income was not consistent with the statutory requirement as set forth in the regulatory agreement. Because of insufficient instructions accompanying HUD Form 3104, project owners had been making monthly computations of excess rents on a noncumulative basis which provided no offset for rents not collected in prior months. As a result of these miscalculations, project owners were erroneously remitting the HUD amounts in excess of the amounts due under the statutory requirement. The following example is instructive in demonstrating the manner in which this inequitable situation arose:

Basic Rent	Tenant Owes	(Cumulative) Excess, If Any	Actual Rent Collected
First Month			
120	150	30	150
100	100	—	100
110	120	10	—
120	130	10	—
450	500	50	250
Second Month			
120	150	60	150
100	100	—	100
110	240	20	240
120	260	20	260
450	750	100	750

As set forth in this chart, two tenants were delinquent in payment of their rent for the first month. This delinquency, however, was made up in the second month as a result of the payment of two months rent by the two delinquent tenants. In the second month, the project owner collected rents in the amount of $750, some $300 in excess of the sum of the basic rents ($450) for that month. With no allowable offset for rents not collected in the first month, a project owner would be required to remit $300 in excess rents to HUD. However, with the benefit of such an offset, the actual amount required to be remitted to HUD in the second month is $100, which equals the aggregate amount collected in excess of basic rents for the first and second months.

8. The Department determined that the excess rental requirement contained in Section 236(g), properly interpreted, requires a project owner to utilize a method of computation of excess rentals which allows an offset for rents not collected in prior months. In June 1975, final clearance was given to Transmittal No. 24 (Exhibit B), which revised HUD's Insured Project Servicing Handbook to provide the following formula for calculating excess rents:

Total month's rent collections
Less basic rents for all occupied units
Less collection losses
Will equal excess rents

In that same month, HUD Form 3104 was revised to clarify the formula for calculating excess rents. Revised Form 3104 (Exhibit C), provides for a loss incurred in one month to be carried forward so that it offsets actual rent collected in following months. This revised Form 3104 does not represent a new procedure for calculating excess rentals, but rather a clarification of the procedure which project owners should have been utilizing since the inception of the Section 236 program.

9. As a result of this clarification of the procedure for compliance with Section 236(g), a project owner now remits only the amount of excess rents properly computed

as required by statute. However, no provision has yet been made to compensate a project owner for excessive payments previously remitted to HUD prior to June 1975. I have been advised by the Office of General Counsel that the Department is legally obligated to refund overpayments erroneously remitted by a project owner as a result of an incorrect interpretation of the requirements of Section 236(g) and the regulatory agreement. On the basis of this legal opinion, the Department has developed and is preparing to implement a procedure for refunding excess rentals erroneously remitted by making the formula set forth in revised Form 3104 and Transmittal No. 24 retroactive to the date that each project owner began remitting excess rentals to HUD. The Department estimates that approximately $18 million is necessary to make these refunds.

10. On August 22, 1974, Congress enacted the Housing and Community Development Act of 1974. Section 212 of that Act amends Section 236(g) of the National Housing Act to provide that excess rentals shall be credited to a reserve fund which is available to make operating subsidy payments authorized by subsection (f)(3). This statutory provision states that, during any period that the Secretary determines that the balance contained in the reserve fund is sufficient to meet estimated appropriations authorized by Section 236(i) and be available until the end of the next fiscal year for the purpose of making operating subsidy payments. As set forth in the Affidavits of Fred W. Pfaender and Carla Hills, previously submitted to the Court, the Secretary has not made such a determination for the following reasons:

(a) the Department has estimated that it will require an amount aggregating $4.3 million per month or $51.4 million per year to meet nationwide operating subsidy requirements for Fiscal Year 1976; and

(b) the amount contained in the reserve fund was $31,556,312.00 (now $40,647,789.00 as of October 31, 1975).

11. In view of the fact that there is a charge upon the reserve fund for the sums necessary to refund excess

rentals erroneously collected prior to June 1975, the Secretary cannot determine the balance is sufficient to meet estimated operating subsidy requirements for Fiscal Year 1976. Although the Department has estimated that $18 million will be required to make such a refund the precise amount required, which can only be accurately determined after project owners submit the necessary financial records, may exceed the $18 million estimate.

/s/ Robert C. Odle, Jr.

ROBERT C. ODLE, JR.
Acting Assistant Secretary
for Housing Management

Subscribed and sworn to before me on this 5th day of February 1976.

/s/ Bernard E. Banks

BERNARD E. BANKS
Notary Public

My Commission Expires June 30, 1976.

CV75-3009-JWC

HILDA ABRAMS, ET AL.

vs

CARLA HILLS, ET AL.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
9/4/75	Fld complt. Issd sep summs. Fld req & ORD for serv of process by other than the USM naming Ronald Javor
9/24/75	Fld Defts G & K Management Co., & Meyler Park Apt's ANSWER to complt
10/3/75	Fld Plt's Notc of Motn & Motn, retbel 10/20/75 10am, for S/J or in the alt Prelim Inj. With Memo of P/A in supp, Affod & Exhbts Fld Pltf's Memo of P/A in supp fo S. J. or in the Alt Prelim Inj with Notc of Motn, Affid & Exhbts Fld Pltf's Affod of Material Facts As to which pltfs contend there is no Genuine issue in supp of Pltf's Motn for S/J LODGED Pltf's Proposed Find/Fact & Concl of law in supp of Pltf's Motn for S/J LODGED Pltf's Proposed S/J
10/16/75	Fld Stip & ORD retble 11/17/75, for hrg on plts Motn for S/J, or in the alter for Prelim Injunction.
10/31/75	Fld Federal Defts' notc of motn & motn, retble 11/17/75 10am, to dism or for S/J. Fld Federal Defts' oppos to Pltfs' motn for S/J or for Prelim Inj & in support of Fed Defts' motn to dism or for S/J. Fld Federal Defts' exhs "A" thru "K" in support of Their oppos to Pltfs' motn, & in support of their motn.

DATE	PROCEEDINGS

LODGED Federal Defts' proposed Find/Fact & conclusions of Law.

LODGED Federal Defts' proposed Jdgmnt.

11/4/75 Fld Stip & ORD retble dt not given, re: facts betwn Pltfs & C & K Managmnt co. & Meyl Park Apartments, defts.

11/7/75 Fld Defts Affid of Sherman Gardner in response to pltfs motn for S/J, or in the alter for prelim injunctn.

11/10/75 Fld Pltfs oppos to Defts motn for dism or in the alter for S/J & Exbts.

11/17/75 MIN ORD: Hrg motn of Fed defts for S/J; Hrg motn of pltf for S/J or in the alter for prelim injunctn; Crt ords mttrs stand submtd. Cnsl shall file stip facts and contentions re unstip facts.

Fld pltf's exhbts "Y" and "Z".

11/20/75 Fld Pltfs' Atty's certificate of personal serv of Pltf's exhs Y & Z.

11/19/75 Fld Federal Defts' Stip of Facts with Reservations.

12/12/75 LODGED Pltfs' second proposed Find/Fact & Conclusions of Law in support of Pltfs' mem in response to Crt's req of 12/4/75.

LODGED Pltfs' proposed Ord in support of Pltfs' memo in response to Crt's req of 12/4/75

Fld Separate summs retnd served as to all Govt defts.

Fld Separate summs retnd servd as to all non-Govt defts.

Fld pltfs' memo in response to the Crt's request of 12/4/75 for comment upon the proposed findgs of fact and Conclsns of law.

Fld Fed defts suppl memo of law.

12/19/75 Fld Pltf's 2nd proposed finds of fact & concl of law in supp of pltf's memo in response to the Crts reqst of 12/4/75.

DATE	PROCEEDINGS

Fld pltf's ORD in supp of pltf's memo in response to Crts reqst of 12/4/75. (Ent 12/19/75 m/cpys & ntfd prtys)

12/29/75 Fld Pltfs' Bill of Costs, retble 1/6/76 10am.
Fld Federal Defts' notc of motn & motn, retble 1/19/76 10am, for rehrg; memo in support. (2 seperate docs)

1/9/76 Fld pltfs' reply to Federal defts' motn for rehrg & exhbts.
LODGE pltfs' proposed exhbts.
Fld Fed Defts' notc of motn for stay pending decision on their motn for rehg & pend appeal, retble 1/26/76 at 10AM.
Fld Fed Defts; motn for stay pending decision on their motn for rehearing & pending appeal, with memo of law.

1/13/76 Fld Stp & ORD cont motn for rehrg to 1/26/76 at 10AM.

1/19/76 Fld pltfs' memo in oppos to Fed defts' motn for stay pending decision on their motn for rehrg & pending appeal, with exhibits.

1/21/76 Fld Fed defts' reply to pltfs' objections to pending motns.

1/26/76 MIN ORD: Crt takes under submission motn of Fed Defts for re-hrg. Motn for stay pending decision on motn for re-hrg & pending appeal is cont to 2/2/76, 10AM.

2/2/76 Fld pltfs' supplemental memo.

*1/26/76 Taxed costs in sum of $122.36, against Defts.

2/2/76 MIN ORD: Crt ORD Fed. Defts to file affis within 1 week & pltfs has 1 week thereafter to respond. Crt ORD matter to stand submitted upon filing fo the additional docs.

DATE	PROCEEDINGS

2/4/76 Fld Fed defts' exhibit M—affid of Thomas J. O'Connor; exhibit N—affid of Abner Silverman.

2/17/76 Fld pltfs' response to Fed Defts' affids submitted 2/4/76, exhibits.

4/27/76 MIN ORD: It is ORD'd that the Federal defs motn for stay pending appeal is DENIED.

4/28/76 Fld pltfs' findngs of fact & concls of law in support of pltfs' motn for S/J.

5/6/76 Fld Crt's memo opinion.

5/12/76 Fld Federal defts' NOTICE OF APPEAL w/ proof of service from final Order dated 12/19/75. (as per F.R.C.P. Rule 59(b))

5/19/76 Fld S/J & ORD Grantng pltf's mot for S/J. (Ent 5/21/76 m/cpys & ntfd prtys)

5/20/76 MIN ORD: ORD finds of fact & concl of law fld 4/28/76 are hereby stricken. (JWC) m/cpys

5/21/76 Fld Federal Defts' desig of contents of record on appeal.

6/2/76 Fld Federal defts' exbt O, affid of compliance.

6/4/76 Fld pltfs' suppl desig of contents of Record on Appeal.

6/4/76 Fld defts NOTICE OF APPEAL fr Ord ent 5/21/76 w/proof of service.

6/11/76 Fld Defts Suppl designtn of contents of Rcrd on appl.

**6/7/76 Fld Federal Deft's application & ORD for stay pending appeal.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. CV 75 3009 JWC

HILDA ABRAMS, GRETA JAEGER, MARGARET MCEACHIN, Individualy, and as representatives of a class,

PLAINTIFFS

vs.

CARLA HILLS, as Secretary of the United States Department of Housing and Urban Development, H. R. CRAWFORD, as Assistant Secretary for Housing Management of the United States Department of Housing and Urban Development, ROLAND CANFIELD, as Director of the Los Angeles Area Office of the United States Department of Housing and Urban Development, and G & K MANAGEMENT CO., INC., and MEYLER PARK APARTMENTS, a Limited Partnership, DEFENDANTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND MANDAMUS, AND AFFIDAVITS AND EXHIBITS

I.

PRELIMINARY STATEMENT

Plaintiffs, who are all tenants in Meyler Park Apartments, a federally subsidized housing project designed for lower-income families, individually and on behalf of all others similarly situated, bring this action to enforce their rights under the National Housing Act, as amended by the Housing and Community Development Act of 1974. 12 U.S.C. § 1701 *et seq.* Plaintiffs seek declaratory and injunctive relief against federal Defendants HILLS, CRAWFORD, and CANFIELD, hereinafter federal Defendants, to declare the approval of the 10.4% rent increase illegal, as contrary to the purposes and intent of the National Housing Act and the rules and regulations promulgated pursuant thereto pertaining to the application for and approval of a rent increase request; and to enjoin federal Defendants from enforcing the approved rent increase until they comply with the duly adopted rules and regulations and implement the operating subsidy as required by 12 U.S.C. § 1715z-1(f)(3) and (g), hereinafter referred to as the operating subsidy. Congress, by enacting the operating subsidy program, provided that federal Defendants shall make additional assistance payments to project owners for increases in property taxes and utilities, above the initial operating expense level for the project, if the increases produce a rental in excess of twenty-five to thirty percent (25-30%) of the tenants' incomes. Federal Defendants have refused to implement this mandatory statutory provision. Such inaction has caused and will continue to cause Plaintiffs severe and irreparable harm. In addition, pursuant to 28 U.S.C. § 1361, Plaintiffs seek an order compelling federal Defendants to comply with the duly adopted rules and regulations and to implement the operating subsidy.

Plaintiffs further seek an order enjoining private Defendants MEYLER PARK APARTMENTS, a Limited Partnership, and G & K MANAGEMENT CO., INC., hereinafter private Defendants, from implementing the recently approved rent schedule by increasing Plaintiffs' rents from $116 to $128 per month; and an order compelling them to apply for the operating subsidy in accordance with the existing rules and regulations duly adopted by federal Defendants and in accordance with the operating subsidy provision of the Housing and Community Development Act of 1974.

II.

JURISDICTION

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 (federal question); 1337 (commerce clause); 1361 (mandamus), and by 5 U.S.C. § 702 (Administrative Procedure Act). As hereinafter more fully appears, this action arises under federal law, and the Acts of Congress regulating interstate in commerce. The matter in controversy exceeds the sum of $10,000 for each Plaintiff, exclusive of interest and costs. Plaintiffs bring this action to compel federal Defendants to perform duties owed to Plaintiffs and to secure judicial review of actions taken by federal Defendants.

2. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of Fed.R.Civ.Pro. and by 5 U.S.C. § 703.

III.

PLAINTIFFS

3. Plaintiff, HILDA ABRAMS, age 78, is and has been a tenant for the past three (3) years at the Meyler Park Apartments, residing alone in Apartment 106, 860 West 5th Street, San Pedro. She received notice from private Defendants that her rent would be increased from $116 to $128 per month, beginning September 1, 1975. Her "gross" income of $293 per month is from

Social Security and savings account interest. Thus, with the approved increase, her rent will constitute 43.7% of her income, and approximately 46% of her "adjusted monthly income." (Exhibit A)

4. Plaintiff, GRETA JAEGER, age 70, is and has been a tenant for the past three (3) years at the Meyler Park Apartments, residing alone in Apartment 118, 860 West 5th Street, San Pedro, California. She received notice from private Defendants that her rent would be increased from $116 to $128 per month, commencing September 1, 1975. Her "gross" income of $338.00 per month is from Social Security and savings account interest. Thus, with the proposed rent increase, her rent will constitute 38.7% of her gross income and approximately 40% of her "adjusted monthly income." (Exhibit B).

5. Plaintiff, MARGARET McEACHIN, age 74, is and has been a tenant for the past three (3) years at Meyler Park Apartments, residing alone in Apartment 117, 860 West 5th Street, San Pedro, California. She received notice from the defendants that her rent would be increased from $116 to $128 per month, beginning September 1, 1975. Her "gross" income of $357.00 per month is from Social Security and a pension. Thus, with the proposed rent increase, her rent will constitute 35.8% of her "gross income," and 37.6% of her "adjusted monthly income." (Exhibit C).

IV.

CLASS ACTION

6. The named Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a) and (b)(2) of Fed. R.Civ.Pro., on behalf of all other persons similarly situated. Plaintiffs' class is comprised of all persons who presently reside in Meyler Park Apartments or who may reside there in the future and who pay or will pay more than twenty-five to thirty per cent (25%-30%) of their "adjusted family income" for rent. The requirements of Rule 23 are met in that: the number of persons in this

class is so numerous as to make joinder impossible; there are questions of law and fact common to the class in that the Federal Defendants illegally approved a rent increase for the class of Plaintiffs, by failing to enforce duly adopted rules and regulations in approving said increase and refusing to implement the operating subsidy contrary to the statute and Congressional intent and illegally granted private Defendants permission to enforce such rent increases, as of September 1, 1975; the claims of the named Plaintiffs are typical of the class; the named Plaintiffs will fairly and adequately protect the interests of the class; and all Defendants have acted on grounds generally applicable to the class in that private Defendants, without formally applying for an operating subsidy requested, received approval of, and notified all Plaintiffs of the rent increase effective September 1, 1975; (such rent increase has been cancelled for sixty (60) days upon stipulation of Plaintiffs and private Defendants), and federal Defendants approved said increase contrary to duly adopted rules and regulations and without implementing the operating subsidy, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V.

DEFENDANTS

7. Defendant CARLA A. HILLS is sued in her official capacity as Secretary of the Department of Housing and Urban Development. 12 U.S.C. § 1702. She has overall responsibility for the administration and enforcement of all laws, regulations, powers and duties pertaining to the operation of the Department of Housing and Urban Development (hereinafter HUD). In particular, Defendant HILLS is responsible for the administration of Section 236 of the National Housing Act, 12 U.S.C. § 1701 *et seq.*

8. Defendant H. R. CRAWFORD is sued in his official capacity as the Assistant Secretary for Housing Management for HUD. He is responsible for the man-

agement of housing projects constructed under the National Housing Act and under authority delegated to him by the Defendant HILLS. In particular, he is responsible for the administration and enforcement of the management of the Section 236 Housing Program.

9. Defendant ROLAND CANFIELD is sued in his official capacity as the Area Director of the Los Angeles Area Office of HUD. He is responsible for administering and enforcing in Southern California the Section 236 Program, and all laws, regulations, and procedures applicable thereto.

10. Defendant G & K MANAGEMENT COMPANY, INC., is a corporation doing business in California whose principal office is located in Los Angeles, California, and which operates the Meyler Park Apartments, a 99-unit Section 236 development in San Pedro, California.

11. Defendant MEYLER PARK APARTMENTS is a limited partnership doing business in California whose principal office is located in Los Angeles, California, and which owns the Meyler Park Apartments, a ninety-nine (99) unit Section 236 federally-subsidized housing project for lower income families located at 860 West 5th Street, San Pedro, California.

VI

BACKGROUND

12. The Section 236 housing program was created as part of the Housing and Urban Development Act of 1968, amending the National Housing Act, 12 U.S.C. § 1701 *et seq.* The stated objective of these amendments was a reaffirmation of the goal of a "decent home and suitable living environment for every American family." To achieve this goal, Congress designed programs "to assist families with incomes so low that they could not otherwise decently house themselves." 12 U.S.C. § 1701t. In particular, the Section 236 Program was designed "for the purpose of reducing rentals for lower income families." 12 U.S.C. § 1715z-1(a).

13. Section 236 authorizes the Secretary of HUD to make periodic interest reduction payments on behalf of qualified mortgagors not to exceed the sum necessary to reduce the effective interest payments on the mortgage to one percent (1%) per annum. The savings realized by this subsidy is passed on to the tenants in the form of reduced rental payments. 12 U.S.C. § 1715z-1(f).

14. Qualified tenants pay no more than twenty-five percent (25%) of their "adjusted monthly income" for rent, but must pay at least "basic rent" which is determined on the basis of a mortgage amortized at a one per cent (1%) interest rate and no more than "fair market rent" which is based upon a mortgage amortized at existing interest rates.

15. As a condition for receiving the benefits of the Section 236 Program, project owners agree to be regulated with respect to rents, rent increase procedures (24 C.F.R. § 401.1), rate of return and methods of operation (24 C.F.R. §§ 236.1, 425.3) including tenant eligibility (24 C.F.R. §§ 236.65, 236.72, 425.19, 425.21, 425.22) and leases (24 C.F.R. §§ 236.75, 425.23) and the definition of tenants' "adjusted monthly income" (24 C.F.R. § 236.2) in a manner satisfactory to the Secretary of HUD.

16. The federal Defendants are responsible for the implementation of the Section 236 Program. As such, they publish and implement rules and regulations affecting the private Defendants, and have executed a Regulatory Agreement with Defendant Meyler Park Apartments, Ltd., and made interest-reduction payments to a mortgagee on behalf of private Defendant Meyler Park Apartments, Ltd., in accordance with such agreement.

17. Meyler Park Apartments, a 99-unit lower-income housing project located in San Pedro, City of Los Angeles, California, was constructed and financed pursuant to Section 236 of the National Housing Act (12 U.S.C. § 1715z-1 *et seq.*).

18. Maximum rents for Section 236 projects are established and approved by the federal Defendants (24 C.F.R. §§ 236.55, 425.15). The Form Regulatory Agreement (Exhibit D) which is signed by the project owner and HUD states and provides in pertinent part that:

4. The owners covenant and agree that:

. . . .

(b) The rental charged for each unit which will include all utilities except telephone, will be equal to 25% of the tenants' income or the basic rental, whichever is greater, but in no event shall rental charged exceed the fair market rental.

. . . .

(h) They shall require all tenants who do not pay the fair market value to execute a lease in the form prescribed by the Commissioner, and shall not rent any unit in the project for less than 30 days nor more than one year.

. . . .

(j) No change shall be made in the basic rental or fair market rental unless approved by the Commissioner.

19. The approved form HUD Lease (Exhibit E) for all Section 236 tenants provides in pertinent part that:

WHEREAS, pursuant to a Regulatory Agreement between the LANDLORD and the Secretary, the LANDLORD has established a basic rent schedule and a fair market rental schedule for each unit in the project, which schedules have been approved by the Commissioner; and, ...

. . . .

WHEREAS, the LANDLORD has determined that the TENANT is eligible to pay less than the fair market rental;

NOW, THEREFORE,

. . . .

2. The monthly rental, stipulated herein, shall include the costs of all hot and cold water, janitor service, electric current, gas and heat (all of which utilities LANDLORD covenants and agrees to furnish to the TENANT at reasonable times and in rea-

sonable amounts). LANDLORD shall not collect any charges for such utilities in addition to the monthly rental.

An addendum added to Plaintiff's leases by Defendant G & K provides in pertinent part that:

> 4. Notwithstanding any other provision hereof, should the Department of Housing and Urban Development approve a rental increase for the subject property, upon the giving of a thirty (30) day notice thereof to Lessee, Lessee's rental will be increased to the amount approved by the Department of Housing and Urban Development. However, should the rental increase equal or exceed twenty-five per cent (25%) of Lessee's present rental, Lessee may terminate this lease and vacate possession of subject property with no further obligations beyond the date Lessee surrenders possession. (Exhibit F)

20. To increase rents, project owners must comply with regulations designed to protect the tenant from arbitrary actions by either HUD or the project owner. 24 C.F.R. 401; amended by *Fed. Reg.*, Vol. 40 (No. 133, p. 29073, July 10, 1975). The rules and regulations adopted by HUD for substantively evaluating the rent increase request in pertinent part, provides that:

> 3. With the approval of HUD, a schedule of shelter rents must be established initially and maintained thereafter at levels that will provide *reasonable charges to tenants* and a fair return to the mortgager. As a general rule, the objective in examining and approving a request for an increase in rent is to compensate for *demonstrated increases* in operating expenses and taxes and thus afford the prospect of a rate of return to the owner not in excess of the rate initially allowed.
>
> . . . .
>
> c(3)(b)*1* Except for those cases where a rental schedule was aproved for rents below maximum permissible rates, the only justification for a

rent increase in a *bona fide increase* in operating expenses or real estate taxes

Insured Project Servicing Handbook, 4350.1 Ch 4, §3 Para 3, p. 1 and 4 (Exhibit G) (Emphasis added)

21. On August 22, 1974, the Housing and Community Development Act of 1974 became law. Section 212(2)(3) and (3)(g) of that Act (the operating subsidy provision) amended the Section 236 program and provided as follows:

. . . .

(2)(3) For each project there shall be established an initial operating expense level, which shall be the sum of the cost of utilities and local property taxes payable by the project owner at the time the Secretary determines the property to be fully occupied, taking into account anticipated and customary vacancy rates. At any time subsequent to the establishment of an initial operating expense level, the Secretary is authorized to make and contract to make additional assistance payments to the project owner in an amount up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level, but not to exceed the amount required to maintain the basic rentals of any units at levels not in excess of 30 per centum, or such lower per centum not less than 25 per centum as shall reflect the reduction permitted in clause (ii) of the last sentence of paragraph (1), of the income of tenants occupying such units. Any contract to make additional assistance payments may be amended periodically to provide for appropriate adjustments in the amount of assistance payments. Additional assistance payments shall be made pursuant to this paragraph only if the Sec-

retary finds that the increase in the cost of utilities or local property taxes is reasonable and is comparable to cost increases affecting other rental projects in the community.
12 U.S.C. § 1715z-1(f)(3)

. . . .

(3)(g) The project shall, as required by the Sec. retary accumulate, safeguard, and periodically pay to the Secretary all rental charges collected in excess of the basic rental charges. Such excess charges shall be credited to a reserve fund to be used by the Secretary to make additional assistance payments as provided in paragraph (3) of sub-section (f). During any period that the Secretary determines that the balance in the reserve fund is adequate to meet the estimated additional assistance payments, such excess charges shall be credited to the appropriation authorized by subsection (i) and shall be available until the end of the next fiscal year for the purpose of making assistance payments with respect to rental housing projects receiving assistance under this section. For the purpose of this subsection and paragraph (3) of subsection (f), the initial operating expense level for any project assisted under a contract entered into prior to the date of enactment of the Housing and Community Development Act of 1974 shall be established not later than 180 days after the date of enactment of such Act.
12 U.S.C. § 1715z-1 (g)

22. Funds for the implementation of this provision were appropriated on September 6, 1974 (Pub.L. 93-414, U.S. Code Cong. Admin. News, 93d Cong., 2d Sess., Vol. 1, p. 1256). Upon information and belief, all the available funds have not been spent or obligated. The reserve

fund referred to in Section 212 (3) upon information and belief is available to federal Defendants for use as an operating subsidy and is currently valued at more than thirty-million dollars ($30,000,000.00).

VII.

FIRST CAUSE OF ACTION

23. Plaintiffs reallege and incorporate by reference each and every allegation contained in Paragraphs 1 through 22 as if fully set forth herein.

24. Plaintiffs and members of their class are lower income families within the meaning of Title 12 U.S.C. § 1715z-1. As such, they rent units in Meyler Park Apartments from the private Defendants at an amount less than the fair market value of their units, presently at $116.00 per month, which is an amount greater than twenty-five or thirty percent (25-30%) of their gross incomes.

25. More particularly, private Defendants approved Plaintiffs on the basis of their incomes as eligible tenants and entered into lease agreements with them, which agreements are in effect at present and are automatically renewable unless terminated for good cause by thirty (30) days notice by private Defendants, or by 30 days notice by Plaintiffs.

26. Under the terms of these lease agreements, Plaintiffs pay rent at the rate less than the established fair market rental. Plaintiffs are informed and believe, and on that basis allege, that the difference between the amount of rent Plaintiffs pay and the fair market value of their units when spread over the life of the mortgage represents a value to each Plaintiff exceeding ten thousand ($10,000.00) dollars, exclusive of interest and costs.

27. Plaintiffs Hilda Abrams, Greta Jaeger, and Margaret McEachin signed original leases in 1972 or 1973 to pay rent at the rate of $105.32 per month. Plaintiff's leases were first amended effective November 1, 1974, to increase the rent 10.8% to $116.00 per month.

Said rent raise was attributed at least in part to increased utility costs and property taxes (Exhibit H).

28. On or about May 29, 1975, private Defendants, pursuant to HUD regulations (24 C.F.R. § 401), notified Plaintiffs of their intention to apply to HUD for approval of a second rent increase. The rent increase was requested, at least in part, because of a dramatic increase in utility costs and an increase in property taxes. (Exhibit I).

29. On or about July 1, 1975, private Defendants submitted to federal Defendants the request for a rent increase. This request was approved by federal Defendants because of the increased costs for all utilities, property taxes, and other operations costs. (Exhibit J).

30. On or about July 28, 1975, Plaintiffs were notified that the rent increase had been approved by the federal Defendants and that effective September 1, 1975, their rents would be increased by 10.4%, to $128.00 per month. (See Exhibit K).

31. Plaintiffs, through their attorney Ronald S. Javor, requested private Defendants to postpone the rent increase and apply to federal Defendants for an operating subsidy to cover the increases in property taxes and utilities. (See Exhibit L). The granting of the operating subsidy would make the proposed rent increase unnecessary.

32. On September 2, 1975, Plaintiffs and Defendant G & K Management Company, Inc., entered into the following agreement:

AGREEMENT

between

G & K MANAGEMENT CO., INC.

and

LEGAL AID FOUNDATION OF LONG BEACH

It is hereby stipulated by and between G & K MANAGEMENT CO., INC. and RONALD S. JAVOR, Attorney at Law, on behalf of those certain residents of MEYLER PARK APARTMENTS who would, if the pro-

posed $12.00 rental increase were to take effect as scheduled, be paying an amount in excess of Thirty Per Cent (30%) of their Adjusted Family Income, that:

(1) G & K MANAGEMENT CO., INC. hereby agrees to send forthwith to current residents of MEYLER PARK APARTMENTS a notice of the cancellation of the proposed Security Deposit increase of $12.00, said cancellation to be effective for a period of one year commencing on September 1, 1975 and ending on August 31, 1976.

(2) G & K MANAGEMENT CO., INC. hereby agrees to voluntarily rescind for a period not to exceed sixty (60) days, beginning September 1, 1975 and ending October 31, 1975, the proposed rental increase of $12.00 with respect to those residents of the MEYLER PARK APARTMENTS who, by virtue of said rental increase, would thereafter be paying a total rental in an amount in excess of Thirty Per Cent (30%) of their Adjusted Family Income (defined as Ninety-Five Per Cent (95%) of Gross Income).

(3) After the expiration of the sixty (60) day period referred to hereinabove, if the UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT is neither making nor has been ordered to make Additional Assistance Payments to MEYLER PARK APARTMENTS, A LIMITED PARTNERSHIP, pursuant to Section 212 of the Housing and Community development Act of 1974, G & K MANAGEMENT CO., INC, and/or the residents of MEYLER PARK APARTMENTS (represented by MR. JAVOR) shall have the right to take whatsoever action as they may deem necessary in the circumstances to preserve and maintain their respective positions with regard to the proposed rental increase, including, but not limited to, an application to a court of competent jurisdiction for appropriate relief.

This agreement shall in no way prejudice or otherwise be construed in such a way so as to constitute a waiver of an right, duty, or obligation of either party hereto with respect to the matter of the Residents of MEYLER PARK APARTMENTS, et al versus H.U.D.

THE LEGAL AID FOUNDATION
OF LONG BEACH

_____

BY: _____
RONALD S. JAVOR
Attorney at Law

DATE: _____

G & K MANAGEMENT CO., INC.

_____

BY: _____
SHERMAN GARDNER
President

DATE: August 28, 1975

EXHIBIT M

33. Unless restrained by this Court, private Defendants will attempt to increase Plaintiffs' rents as of November 1, 1975, resulting in grave hardship to the Plaintiffs and threat of eviction due to their inability to pay the increased rent. The increase will go into effect without affording Plaintiffs their rights to receive the benefits of the operating subsidy, which mandates that additional assistance payments must be made to qualified Section 236 project owners on behalf of tenants whose rents have increased as a result of increases in property taxes and utilities.

34. The lack of opportunity to receive the benefits of the operating subsidy will cause Plaintiffs and all those similarly situated great and irreparable injury.

VIII.

SECOND CAUSE OF ACTION

35. Plaintiffs reallege and incorporate by reference each and every allegation contained in Paragraphs 1 through 22 as if fully set forth herein.

36. The language of Section 212 of the Housing and Community Development Act of 1974 (the operating subsidy provision) authorizing federal Defendants to establish within 180 days, by February 18, 1975, an initial operating expense level for each Section 236 project and to make payments to project owners for cost of utilities and local property taxes in excess of the initial operating expense level in amounts not to exceed an amount required to maintain rentals at levels not in excess of twenty-five to thirty percent (25-30%) of the tenant's income is a clear statement of mandatory duty. The thirty million dollar ($30,000,000.00) reserve fund must be used to satisfy the need for operating subsidies before alternative uses may be considered. Thus, the duty to implement Section 212 is a ministerial duty.

37. The federal Defendants have not established an initial operating expense level for Meyler Park Apartments. Although federal Defendants have a mandatory duty to establish the operating expense level by Febru-

ary 18, 1975, they have made no attempt to comply with the statute.

38. The federal Defendants neither issued rules and regulations implementing the operating subsidy provision nor have they made additional payments available to private Defendants, in accordance with the operating subsidy provision, to cover increases in property taxes and utilities which result in a rent in excess of twenty-five to thirty percent (25-30%) of the Plaintiffs' "adjusted monthly incomes."

39. Upon information and belief, federal Defendants are considering utilizing the reserve fund for purposes other than the implementation of the operating subsidy (Exhibit N).

40. Despite the fact that the federal Defendants have openly admitted that they will not implement the operating subsidy provision, Plaintiffs, through their attorney, Ronald Javor, have requested federal Defendants to implement the operating subsidy, to establish an operating expense level for Meyler Park Apartments, to make additional assistance payments to private Defendants for any increases in property taxes and utilities which result in a rental in excess of twenty-five to thirty percent (25-30%) of Plaintiffs' incomes and to rescind the approved rent increase until there has been compliance with the operating subsidy provision. (Exhibits N and O).

41. By failing to implement the operating subsidy provision and approving a rent increase, federal Defendants are denying Plaintiffs their legal benefits and will cause them to suffer irreparable harm. By failing and refusing to implement the operating subsidy, federal Defendants have violated their * * * under that section and have deprived Plaintiffs of rights conferred by that section.

42. If it were not for the agreement entered into between Plaintiffs and Defendant G & K Management Company, Inc., Plaintiffs, as a direct result of the federal Defendants' actions, would be obligated to pay an additional $12.00 per month in rent as of September 1, 1975. Plaintiffs are currently paying $116.00 per month for rent which is more than twenty-five percent (25%) of their "adjusted monthly incomes." Upon information

and belief, at a minimum, $12.00 of the proposed $128.00 rental is attributable to increases in property taxes and utilities and thus the entire rental increase should be supplemented by the operating subsidy. Plaintiffs will be harmed if the $12.00 rental increase is assessed against them, and will continue to be harmed, since they are currently forced to pay more than they should and more than they can afford without sacrificing other necessities in order to secure decent, safe, and sanitary housing.

IX.

THIRD CAUSE OF ACTION

43. Plaintiffs reallege and incorporate by reference herein each and every allegation contained in Paragraphs 1 through 22 as if fully set forth herein.

44. On or about July 1, 1975, federal Defendants received an application for approval of a rent increase from private Defendants. Private Defendants made the request alleging, *inter alia*, that increases in property taxes and utilities necessitated such an increase. On or about July 28, 1975, federal Defendants approved the request for a rent increase in violation of the purposes and intent of the Section 236 housing program and their duly promulgated rules and regulations.

45. The Section 236 housing program is designed to provide decent, safe, and sanitary housing at reduced rentals for lower income families. 12 U.S.C. §§ 1701t and 1715z-1(a). In accordance with this statutory mandate, federal Defendants issued regulations requiring that rents in Section 236 projects be maintained at levels which will provide reasonable charges to tenants and a reasonable rate of return to the project owner. Requested increases are granted only for demonstrated increases in operating expenses, including utilities and property taxes, or for *bona fide* increases in operating expenses, including utilities and property taxes. See *Insured Project Servicing Handbook*, 4350.1 Ch. 4, § 3. (Exhibit G). Implicit in the HUD standard of review is a showing by the project owner that income from sources other

than tenants' rentals have been maximized for the project for which the rental increase was requested.

46. Private Defendants are eligible for an operating subsidy. There have been increases in operating expenses due to increases in property taxes and utilities for Meyler Park Apartments since the project was fully occupied and the tenants pay more than twenty-five to thirty percent (25-30%) of their "adjusted monthly incomes" for rent.

47. Since private Defendants are eligible for an operating subsidy, private Defendants' failure to formally apply for the operating subsidy and federal Defendants' failure to require such application prior to the approval of the requested rent increase is contrary to the purposes and intent of the National Housing Act and the rules and regulations promulgated pursuant thereto. Thus the approval of the rent increase must be rescinded until the federal Defendants and private Defendants have complied with the duly promulgated regulations by exhausting all other sources of income and subsidies for the project.

48. No statute prohibits judicial review of federal Defendants' failure and refusal to implement the operating subsidy provision, nor is the matter committed to agency discretion by law.

49. No further action or inaction by federal Defendants will clarify or make more concrete the issues presented in this action. Judicial review in this case will not interrupt any administrative proceeding.

X.

ACTUAL AND PRESENT CONTROVERSY

50. There exists between Plaintiffs and Defendants an actual and present controversy, in that private Defendants have been authorized by federal Defendants to implement and will implement an illegal rent increase for the Plaintiffs. Private Defendants have failed to formally apply for an operating subsidy. The federal Defendants approved an illegal rent increase and refuse

to implement the operating subsidy provision and rescind the rent increase pending a determination of eligibility for the operating subsidy, thus denying Plaintiffs their statutory benefits. Plaintiffs assert that such action is illegal and contrary to the purposes and intent of the National Housing Act as amended by the Housing and Community Development Act of 1974.

XI.

IRREPARABLE INJURY

51. Plaintiffs will suffer severe and irreparable injury as a result of private Defendants' and federal Defendants' actions to enforce the illegal rent increase unless enjoined by this Court during the prosecution of this litigation and permanently from implementing the rent increase without complying with the duly promulgated rules and regulations and before the operating subsidy has been implemented.

52. The federal Defendants' actions of approving the rent increase of 10.4% in July, 1975, contrary to duly adopted rules and regulations and failing to implement the operating subsidy provision will cause immediate and irreparable harm to the Plaintiffs. Since Plaintiffs are currently eligible to receive the benefits of the operating subsidy, federal Defendants' failure to implement the operating subsidy provision as of February 22, 1975, has caused and will continue to cause immediate and irreparable harm to the Plaintiffs.

XII.

NO ADEQUATE REMEDY AT LAW

53. Plaintiffs have no adequate remedy at law. A money judgment cannot compensate Plaintiffs, who must, to avoid eviction, stretch inadequate incomes and sacrifice other necessities in order to make rental payments which they are not statutorily obligated to make.

XIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the class they represent, pray this Court to:

1. Enter judgment declaring this to be a class action.
2. Enter judgment declaring that the approval of the rent increase of $12.00 is illegal for failure of the federal Defendants and private Defendants to comply with the National Housing Act and rules and regulations promulgated pursuant thereto pertaining to the application for and approval of rent increase requests.
3. Enter judgment declaring that the approval of the rent increase of $12.00 is illegal for failure of the private Defendants to formally apply for and federal Defendants to implement the operating subsidy provision of the Housing and Community Development Act of 1974.
4. Enter judgment declaring that federal Defendants and private Defendants must comply with the purposes and intent of the National Housing Act and the rules and regulations issued pursuant thereto that pertain to applications for and approval of rent increase requests.
5. Enter judgment declaring that federal Defendants must implement the operating subsidy provision of the Housing and Community Development Act of 1974 and that private Defendants must apply for the operating subsidy.
6. Enter judgment declaring that federal Defendants must make operating subsidy payments and continue to make such payments retroactive to February 18, 1975 to private Defendants to offset costs attributable to increases in property taxes and utility costs above the initial operating expense level which have created a rental equal to more than twenty-five to thirty percent (25-30%) of Plaintiffs' "adjusted monthly incomes."
7. Enter judgment mandating federal Defendants to comply with the purpose and intent of the National Housing Act and with existing rules and regulations promulgated thereto pertaining to the request for and approval of a rent increase for Meyler Park Apartments.

8. Enter judgment mandating federal Defendants to implement the operating subsidy provision of the Housing and Community Development Act of 1974.

9. Enter judgment mandating federal Defendants to make operating subsidy payments retroactive to February 18, 1975, and to continue to make such payments to the private Defendants to offset costs attributable to increases in property taxes and utility costs above the initial operating expense level which have created a rental equal to more than twenty-five to thirty percent (25-30%) of Plaintiffs' "adjusted family incomes."

10. Enter a temporary, preliminary, and permanent injunction ordering federal Defendants to rescind the approved rent increase and enjoining federal Defendants from approving or enforcing said rent increase until there has been compliance with the purposes and intent of the National Housing Act and the rules and regulations promulgated pursuant thereto pertaining to application for and approval of rent increase requests and until the operating subsidy provision of the Housing and Community Development Act of 1974 has been implemented.

11. Enter a temporary, preliminary, and permanent injunction enjoining the federal Defendants from making any payments from the Section 212(3) reserve fund for purposes other than implementation of the operating subsidy.

12. Enter a preliminary and permanent injunction enjoining private Defendants, their agents, successors, employees, attorneys, and those acting in concert with them, from enforcing the rent increase, from collecting or seeking to collect from Plaintiffs an increase in rents or from evicting or seeking to evict Plaintiffs or their class for failing to pay any rent increase until there has been compliance with existing rules and regulations and until the operating subsidy provided for by the Housing and Community Development Act of 1974 has been applied for and all benefits due the Plaintiffs and their class have been exhausted.

13. Grant such other and further relief as the Court may deem just and proper, including costs and attorneys fees.

DATED: September 3, 1975

By: /s/ Catherine M. Bishop
CATHERINE M. BISHOP

By: /s/ Ronald S. Javor
RONALD S. JAVOR

EXHIBIT A

AFFIDAVIT OF HILDA ABRAMS

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

HILDA ABRAMS, being duly sworn, deposes and says:

I am a resident of the Meyler Park Apartments, 860 West 5th Street, San Pedro, California, in Apartment 106. I have lived here for approximately 3 years.

I am 78 years old, and receive approximately $240.00 per month from Social Security. In addition, I receive approximately $53 per month from a savings account and a trust deed, and have a long-term savings account from which I receive no monthly interest until accrued.

I have been notified that my rent will be raised to $128.00 per month, effective September 1, 1975, a raise of $12.00 per month. Because of my limited income, and the rising cost of living, this additional rent will be difficult for me, and I may have to use money set aside for other necessities to pay it.

/s/ Hilda Abrams
HILDA ABRAMS

Subscribed and sworn to before me this 25th day of August, 1975

/s/ Erma L. Johnson
ERMA JOHNSON
Notary Public in and for said County and State

[OFFICIAL SEAL]

ERMA L. JOHNSON
Notary Public—California
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY

My Commission Expires July 18, 1979

EXHIBIT B

AFFIDAVIT OF GRETA JAEGER

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

GRETA JAEGER, being duly sworn, deposes and says:

I am a resident of the Meyler Park Apartments, 860 West 5th Street, San Pedro, California, in Apartment 118. I have lived here for approximately three years.

I am 70 years old and receive approximately $273.00 per month from Social Security. In addition, I receive approximately $65.00 per month from interest-bearing savings accounts.

I have been notified that my rent will be raised to $128.00 per month, effective September 1, 1975, a raise of $12.00 per month. Because of our limited income, and the rising cost of living, this additional rent will be a burden on me, and I may have to use money set aside for other necessities to pay it.

/s/ Greta Jaeger
GRETA JAEGER

Subscribed and sworn to before me this 25th day of August, 1975

/s/ Erma L. Johnson
ERMA JOHNSON
Notary Public in and for said County and State

[OFFICIAL SEAL]

ERMA L. JOHNSON
Notary Public—California
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY

My Commission Expires July 18, 1979

EXHIBIT C

AFFIDAVIT OF MARGARET MC EACHIN

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

MARGARET MC EACHIN, being duly sworn, deposes and says:

I am a resident of the Meyler Park Apartments, 860 West 5th Street, San Pedro, California, in Apartment 117. I have lived here for approximately three years.

I am 74 years old, and receive approximately $273 per month from Social Security, and $84.00 per month from a pension. When there is work available, I also attempt to work part-time at the local college.

I have been notified that my rent will be raised to $128.00 per month, effective September 1, 1975, a rise of $12.00 per month. Because of my limited income, and the rising cost of living, this additional rent will be a burden for me, and I may have to use money set aside for other necessities to pay it.

/s/ Margaret Mc Eachin
MARGARET MC EACHIN

Subscribed and sworn to before me this 25th day of August, 1975

/s/ Erma L. Johnson
ERMA JOHNSON
Notary Public in and for said County and State

[OFFICIAL SEAL]

ERMA L. JOHNSON
Notary Public—California
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY

My Commission Expires July 18, 1979

EXHIBIT H

[SEAL]

G & K

Management Co., Inc.

425 S. Fairfax Ave., Suite 201
Los Angeles, Ca. 90036

September 27, 1974

Dear Resident:

Due to the increased costs of operation, including such items as maintenance, utility costs, and property taxes, it will be necessary for us to impose a slight rental increase on all apartments at Meyler Park Apartments.

As of November 1, 1974, the rental schedule will be as follows:

One-bedroom apartments	from $116.00

We will also require, with the payment of your November rent, the following sum, which will be applied to your present security deposit:

One-bedroom apartments	$10.68

We trust you will understand and appreciate our position in this matter, as it is our sole objective to provide you with an atmosphere of comfort and safety that you will be proud to call your home.
Thank you.

Very truly yours,

/s/ Sherman Gardner
SHERMAN GARDNER
President

jp

EXHIBIT K

[SEAL]

G & K

Management Co., Inc.

425 S. Fairfax, Suite 201
Los Angeles, Ca. 90036

July 29, 1975

Dear Resident:

Due to the increased costs of operation, including such items as maintenance, utility costs, and property taxes, it will be necessary for us to impose a slight rental increase on all apartments at Meyler Park Apartments.

As of September 1, 1975 the rental schedule will be as follows:

One bedroom apartments	from $128.00

We will also require, with the payment of your September rent, the following sum, which will be applied to your present security deposit:

One bedroom apartments	$12.00

We trust you will understand and appreciate our position in this matter, as it is our sole objective to provide you with an atmosphere of comfort and safety that you will be proud to call your home.

Thank you.

Very truly yours,

/s/ Sherman Gardner
SHERMAN GARDNER
President

jp

EXHIBIT L

LAW OFFICES OF

LEGAL AID FOUNDATION OF LONG BEACH

HARBOR AREA OFFICE
363 W. Sixth Street
San Pedro, California 90731—831-0355

August 12, 1975

Mr. Sherman Gardner
G & K Management Co., Inc.
425 S. Fairfax, Suite 302
Los Angeles, CA 90036

IN REPLY PLEASE REFER TO:

RE: Meyler Park Apartments

Dear Mr. Gardner:

As a result of our discussion last week, and as a result of reviewing your expenses for utilities and property taxes over the past three years, and the amount allowed by HUD for the coming year, it appears that the entire amount of the proposed raise—$12.00 per month—is equivalent to the amount the aforesaid costs have risen since the project opened. In addition, in your letter to me of June 20, 1975, you pointed out that you are concerned that gas company rates have increased 60%, adding, "Since we carry the responsibility for the utilities, rising property taxes, etc., we are no longer able to sustain the complex at the present rent structure."

In the same letter, you stated that the rent raise was also necessitated because "we exhausted all alternatives before a rent raise was proposed." Since that time, in several telephone conversations, and during our meeting on July 31, 1975, I have explained to you that at least one other source of subsidy is available, particularly because of your emphasis of need being on rising utility costs and property taxes: that being the operating sub-

sidy authorization through HUD as delineated in the Housing and Community Development Act of 1974, Section 212(f)(3) and (g) (12 U.S.C. 1715 z-1(f)(3) and (g). I was quite sure that, by the time I left your office, that you understood the program and its relevance to the Meyler Park situation.

Therefore, since you have not seen fit to pursue this remedy, and possibly prevent rent defaults and evictions among the senior citizens at Meyler Park, on behalf of those tenants, I respectfully request that you postpone the proposed rent increase while you exhaust this additional remedy. You have often proclaimed your concern for the good and welfare of these residents and I believe that this is an appropriate time to demonstrate that concern.

As I have also previously explained, as a representative of the tenants, I stand ready to assist you in any way necessary to facilitate your application for operating subsidy funds, and, correspondingly, ask your good faith in taking the interests of the tenants to heart and placing a moratorium on the rent raise while seeking the subsidization which you and the tenants have a right to.

I will look forward to hearing your response to this request.

Very truly yours,

/s/ Ronald S. Javor
RONALD S. JAVOR
Attorney at Law

cc: Irving Kaplan,
HUD Loan Management Branch
Meyler Park Tenants Association.

EXHIBIT O

LAW OFFICES OF

LEGAL AID FOUNDATION OF LONG BEACH

HARBOR AREA OFFICE
363 W. Sixth Street
San Pedro, California 90731—831-0355

August 12, 1975

Mr. Irving Kaplan
Director, Loan Management Branch
Department of Housing and Urban Development
2500 Wilshire Blvd.
Los Angeles, CA 90057

IN REPLY PLEASE REFER TO:

RE: Meyler Park Apartments
Proj. No. 122-44537-LDP

Dear Mr. Kaplan:

On behalf of the residents of the Meyler Park Apartments, I am requesting that you rescind the approval by your department of the rent raise requested by G & K Management Co., Inc., to be implemented September 1, 1975. This request is made on the grounds that your letter to G & K Management Co. of July 28, 1975, attributes at least part of the raise justification to "demonstrated increases in" utilities and property taxes.

It has been apparent from my past conversations with you and others in your office that although you are aware of the congressional mandate in the Housing and Community Development Act of 1974, Section 212(f)(3) and (g) to initiate a procedure to allocate operating subsidies to buildings suffering from utility and property tax increases, no attempt has been made by your office to initiate said subsidies. In fact, as was pointed out to me, even though it is clear that the Act requires, by February 22, 1975, that initial operating expenses for each project be itemized, no steps have been taken to do so.

I have requested from Mr. Gardner of G & K Management Co. that he delay the rent raise until such time as your office initiates the operating subsidy procedure; from my past conversations with him, I doubt if this is a viable request. Therefore, it is imperative that your office rescind the previously-given approval of the rent raise for such a time as is necessary to determine an initial operating budget for that building, and subsequently establish and facilitate a procedure by which Meyler Park may reap the benefits of the operating subsidy.

Inaction on your part at this time of need for the 98 senior citizen families living at Meyler Park may well result in evictions of those unable to pay the rent increase. Your prompt response to this request would be greatly appreciated.

Very truly yours,

/s/ Ronald S. Javor
RONALD S. JAVOR
Attorney at Law

Enc:

cc: G & K Management Co., Inc.
Ms. Carla A. Hills, Secretary,
U.S. Department of Housing and Urban Development
Mr. H. R. Crawford, Assistant Secretary,
U.S. Department of Housing and Urban Development
Meyler Park Tenants Association.

AXELRAD, SEVILLA AND ROSS
10203 Santa Monica Boulevard
Los Angeles, California 90067
879-1444
Attorneys for Defendants
G & K Management Co., Inc.
and Meyler Park Apartments,
a Limited Partnership

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. CV 75-3009 JWC

[Filed Sep. 24, '75, 2:45 PM—Ch—Jn]

HILDA ABRAMS, GRETA JAEGER, MARGARET MC EACHIN, Individually, and as representatives of a class, PLAINTIFFS

vs.

CARLA HILLS, as Secretary of the U.S. Department of Housing and Urban Development, H. R. CRAWFORD, as Assistant Secretary for Housing Management of the U.S. Department of Housing and Urban Development, ROLAND CANFIELD, as Director of the Los Angeles Area Office of the U.S. Department of Housing and Urban Development, and G & K MANAGEMENT CO., INC., and MEYLER PARK APARTMENTS, a Limited Partnership, DEFENDANTS

ANSWER OF DEFENDANTS G & K MANAGEMENT CO., INC. and MEYLER PARK APARTMENTS, A Limited Partnership TO COMPLAINT

Defendants G & K Management Co., Inc. and Meyler Park Apartments, a Limited Partnership, for themselves alone, answer the complaint herein as follows:

1. Defendants admit each and every allegation contained in the following paragraphs of the complaint: 1 through 46, inclusive, 48 and 49; 51 through 53, inclusive.

2. Answering paragraph 47, defendants admit that "private Defendants are eligible for an operating subsidy" and except as herein expressly admitted, deny each and every remaining allegation contained in said para-

graph. Defendants allege that on or about August 11, 1975, they applied in writing to the federal Defendants for an operating subsidy, and that a true copy of said written application is attached hereto as Exhibit A. Defendants further allege upon information and belief, that the federal Defendants have not promulgated regulations providing for formal application for an operating subsidy.

3. Answering paragraph 50, defendants admit that "there exists between Plaintiffs and Defendants an actual and present controversy" and that the federal Defendants "refuse to implement the operating subsidy provisions" and except as herein expressly admitted deny each and every remaining allegation contained in said paragraph.

WHEREFORE, defendants pray for judgment as follows:

1. That the court declare that the approval by the federal defendants of the rent increase of $12.00 per month is lawful with respect to those of the private defendants' tenants whose rent, as adjusted by said increase, remains less than 30% of their adjusted family income.

2. That the court issue an injunction ordering the federal defendants to implement procedures for determining the private defendants' eligibility for the operating subsidy provided for by the Housing and Community Development Act of 1974 with respect to those of the private defendants' tenants whose rent, as adjusted by the rent increase of $12.00 per month, will be greater than 30% of their adjusted family income.

DATED: September 23, 1974.

AXELRAD, SEVILLA AND ROSS

By /s/ John G. Kerr
JOHN G. KERR
Attorneys for Defendants
G & K Management Co., Inc. and
Meyler Park Apartments, a
Limited Partnership
10203 Santa Monica Boulevard
Los Angeles, CA 90067

MOTION TO DISMISS, OR, IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Federal defendants, by and through the undersigned, respectfully move the Court to dismiss this action pursuant to Rules 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure, on the grounds that the Complaint fails to state a claim upon which relief can be granted, and also that the Court lacks jurisdiction over the subject matter. In the alternative, said defendants move the Court for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, on the grounds that there are no triable issues of fact and defendants are entitled to judgment as a matter of law.

These motions are based upon the pleadings, and the memorandum of points and authorities filed separately herewith, and all exhibits filed in the case.

DATED: This 31st day of October, 1975.

WILLIAM D. KELLER
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant U.S. Attorney
Chief, Civil Division

/s/ Stephen D. Petersen
STEPHEN D. PETERSEN
Assistant U.S. Attorney

Attorneys for Federal Defendants

June 26, 1975

Mr. Sherman Gardner, President
G & K Management Co., Inc.
425 South Fairfax Avenue
Suite 201
Los Angeles, California 90036

RE: *Meyler Park Apartments*

Dear Mr. Gardner:

I appreciated the opportunity to speak with you on Tuesday, June 24, 1975, regarding your proposed rental increase for Meyler Park Apartments, and will be going up to the Apartments to see the forms which you have so generously permitted me to see. After I have an opportunity to study the Section 236 Guidelines, I will then come to your office to look over your monthly statements and/or bills, as you suggested. While I understand your desire to reap the maximum-allowed profit, I am also concerned that a number of senior citizens will be severely inconvenienced by rent raises of over 33% in one year. As a result of the initial promises by you or your agents, that rent would probably remain at a point which represented 25% of income, I believe that you have a obligation not only to maintain a reasonable rental level, but also to seek alternative sources of rent subsidization for those persons who need it.

I will look forward to speaking with you again in the near future. I hope that this matter may be resolved on amicable bases.

Very truly yours,

RONALD S. JAVOR
Attorney at Law

RSJ/mc

cc: Erving Jacobs

CATHERINE M. BISHOP
National Housing and Economic
Development Law Project
2313 Warring Street
Berkeley, California 94704
Telephone: (415) 624-2826

RONALD S. JAVOR
Legal Aid Foundation of
Long Beach
363 West Sixth Street
San Pedro, California 90731
Telephone: (213) 831-0855

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

[Filed Nov. 4, 1975]

Civ. No. 75 3009 JWC

STIPULATION OF FACTS BETWEEN PLAINTIFFS AND G & K MANAGEMENT CO. AND MEYLER PARK APARTMENTS, DEFENDANTS

HILDA ABRAMS, GRETA JAEGER, MARGARET MC EACHIN, Individually, and as representatives of a class, PLAINTIFFS,

vs.

CARLA HILLS, as Secretary of the United States Department of Housing and Urban Development, H. R. CRAWFORD, as Assistant Secretary for Housing Management of the United States Department of Housing and Urban Development, ROLAND CANFIELD, as Director of the Los Angeles Area Office of the United States Department of Housing and Urban Development, and G & K MANAGEMENT CO., INC., and MEYLER PARK APARTMENTS, a Limited Partnership, DEFENDANTS.

IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiffs and G & K MANAGEMENT CO., INC., and MEYLER PARK APARTMENTS, Defendants, by their respective counsel, that, for the purpose of trial or other hearings in the above-entitled cause, the facts hereinafter stated are undisputed and may be treated by the Court as facts proved in open court.

The parties may, on the trial of said cause, call witnesses and offer evidence for the purpose of proving such additional facts as the parties may see fit.

1. The Plaintiffs HILDA ABRAMS, GRETA JAEGER, and MARGARET MC EACHIN, hereinafter, "Plaintiff," are residents of the Meyler Park Apartments, each of whom pay more than twenty-five to thirty percent (25-30%) of their "adjusted family incomes" in rent.

2. The class which Plaintiffs represent are residents of the Meyler Park Apartments, each of whom pay more than twenty-five to thirty percent (25-30%) of their adjusted family incomes" in rent.

3. "Adjusted family income" is determined by the Federal Defendants CARLA HILLS, H. R. CRAWFORD, and ROLAND CANFIELD according to 24 C.F.R. 236.2 to be monthly gross income, including total income before taxes and other deductions, less five percent of monthly gross income and other deductions not listed herein.

4. Defendants CARLA HILLS, H. R. CRAWFORD, and ROLAND CANFIELD, hereinafter "Federal Defendants," are officials of the United States Department of Housing and Urban Development, hereinafter, "HUD," and are responsible for the administration and enforcement of all laws, regulations, powers, and duties relating to that Department, and particularly for the administration of Section 236 of the National Housing Act, 12 U.S.C. § 1701, *et seq.*

5. Defendants MEYLER PARK APARTMENTS, a Limited Partnership, and G & K MANAGEMENT CO., INC., hereinafter, "private Defendants," are respectively, the owner and manager of the Meyler Park Apartments, a 99-unit Section 236 development in San Pedro, California.

6. The Section 236 housing program is a part of the National Housing Act, added by the Housing and Devel-

opment Act of 1968 and designed for the purpose of reducing rentals for low-income families who cannot otherwise afford decent housing.

7. The federal Defendants are responsible for implementation of the Section 236 Program, including issuing rules and regulations pursuant thereto, making periodic interest payments on behalf of qualified mortgagors, and regulating project owners with respect to rent, rent increase procedures, and other operating procedures.

8. The National Housing Act was further amended by the Housing and Community Development Act of 1974, hereinafter, "HCDA, 1974," on August 22, 1974, adding Section 212(2) (3) and (3), hereinafter, "operating subsidy provisions," which provided that HUD was obligated to establish an initial operating expense level by February 18, 1975; that HUD was obligated to exhaust the reserve fund accumulated from rental money received in excess of basic rent standards, in payments to qualified mortgagors under the operating subsidy provisions; and that HUD was obligated to make additional assistance payments to qualified mortgagors, on behalf of appropriate tenants, to subsidize the rise in cost of utilities and property taxes, where reasonable and comparable, from the time of initial occupancy of the project.

9. The reserve fund referred to in Section 212(3) is available to federal Defendants for use as an operating subsidy and is currently valued at more than thirty million ($30,00,000) dollars.

10. Other funds for the implementation of the operating subsidy provision were appropriated on September 6, 1974, and such funds have not been entirely spent or obligated.

11. The Meyler Park Apartments is a 99-unit lower-income housing complex in San Pedro, California, constructed and financed pursuant to Section 236.

12. Qualified tenants in the Meyler Park Apartments pay no more than twenty-five (25%) percent of their "adjusted family incomes" for rent, up to "fair market value," or pay "basic rent," computed on the basis of the amortized mortgage and operating costs, and approved by Federal Defendants.

13. Applications for rent increases are submitted by the private Defendants to the Federal Defendants, and are approved if they are providing reasonable charges to tenants and a fair return to the mortgager. Such increases must be for demonstrated and bona fide increases in operating expenses and taxes, and sources of funds other than tenants' rents must be maximized.

14. Plaintiffs began their occupancy at the Meyler Park Apartments in 1972 and 1973, paying rent at the initial rate of $105.32 per month. Their leases were first amended effective November 1, 1974, to increase the rent ten and eight-tenths percent (10.8%) to $116.00 per month. Said rent raise was attributed at least in part to increased utility costs and property taxes.

15. On or about May 29, 1975, private Defendants notified Plaintiffs of their intention to apply to HUD for approval of a second rent increase, attributing said increase, at least in part, to a dramatic increase in utility costs and an increase in property taxes.

16. On or about July 1, 1975, private Defendants submitted to Federal Defendants the request for a rent increase, which was approved by the Federal Defendants because of the increased costs for all utilities, property taxes, and other operating costs.

17. On or about July 28, 1975, Plaintiffs were notified that the rent increase had been approved by the Federal Defendants and that effective September 1, 1975, their rent would be increased to $128.00 per month, a raise of ten and four-tenths percent (10.4%).

18. An increase in Plaintiffs' rent at this time of twelve ($12.00) monthly will result in grave hardship to Plaintiffs and a threat of eviction due to their inability to pay the increased rent and severe difficulty in providing themselves with the necessities of life from their disposable incomes.

19. Plaintiffs requested private Defendants to apply for additional assistance payments from the operating subsidy, and Federal Defendants to provide additional assistance payments under the operating subsidy program.

20. There have been increases in property taxes and utilities at Meyler Park Apartments since the date that

the apartment complex may be determined to be fully occupied which have increased Plaintiffs' rents by at least, if not more than, $12.00 per month, the amount of the present rent increase.

21. Pursuant to the operating subsidy provision, private Defendants are eligible to receive additional assistance payments on behalf of the Plaintiffs and the class they represent.

22. Federal Defendants have not established an initial operating expense level for the Meyler Park Apartments, neither by February 18, 1975, nor until the present.

23. The Federal Defendants have not issued rules and regulations implementing the operating subsidy provision, nor have they accepted applications for additional assistance payments.

24. Federal Defendants have not made additional assistance payments to private Defendants.

25. Contrary to the statute, the federal Defendants are no longer requiring the private Defendants, and all other Section 236 project owners, to return to the Federal Defendants all money collected as rentals in excess of basic rents.

26. Transmittal Notice 24, which amends The Insured Project Service Handbook (4350.1) issued by the federal Defendants permits the private Defendants and all other Section 236 project owners to subtract from total rents collect the basic rents and, in addition, rent collection losses.

27. As a result of the implementation of this regulation, the reserve fund from which operating subsidies must be paid is no longer accruing at the maximum rate.

28. This regulation is contrary to the HCDA, 1974, and frustrates the purposes and intent of the operating subsidy provision.

29. HUD is using the reserve fund for purposes other than the operating subsidy.

30. HUD may not use the reserve fund for purposes other than the implementation of the operating subsidy unless the reserve fund is adequate to meet the estimated additional assistance payments. If it is adequate, then such excess charges shall be credited to the appropri-

ation for interest-reduction payments for the construction of Section 236 projects.

31. Private Defendants' request for a rent increase was submitted to HUD, and the federal Defendants approved it in violation of their own rules and regulations. The requested increase was not considered in light of the applicability and the private Defendants' eligibility for the operating subsidy. Thus, while the costs justifying the rent increase attributable to increases in utility and property tax costs were reasonable and comparable, the need for such increase was not demonstrated and bona fide because federal Defendants did not consider the application for an operating subsidy for private Defendants, on behalf of Plaintiffs.

32. The matter in controversy exceeds the sum of $10,000.00 for each Plaintiff, exclusive of interest and costs, in that the difference between the amount of rent Plaintiffs pay and the fair market value of their units when spread over the life of the mortgage represents a value to each Plaintiff exceeding ten thousand dollars ($10,000.00).

DATED: October 31, 1975

/s/ Ronald S. Javor
RONALD S. JAVOR,
CATHERINE BISHOP
Attorneys for Plaintiffs

/s/ John G. Kerr
AXELRAD, SEVILLA & ROSS
BY: JOHN G. KERR
Attorneys for Defendants
MEYLER PARK APARTMENTS
G & K MANAGEMENT, CO., INC.

AXELRAD, SEVILLA AND ROSS
Suite 400, Clubview Building
10203 Santa Monica Boulevard
Los Angeles, California 90067

213 277-6620 and 879-1444

Attorneys for Defendants
G & K Management Co., Inc.
and Meyler Park Apartments,
a Limited Partnership

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

[Filed Nov. 7, 1975]

Civil Action No. CV 75-3009 JWC

HILDA ABRAMS, ET AL., PLAINTIFFS,

vs.

CARLA HILLS, ETC., ET AL., DEFENDANTS.

AFFIDAVIT OF SHERMAN GARDNER IN RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR PRELIMINARY INJUNCTION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

SHERMAN GARDNER, being first duly sworn, deposes and says:

1. I am the president of G & K Management Co., Inc., one of the private defendants in this action. I make this affidavit in response to the plaintiffs' motion for summary judgment, or in the alternative, for a preliminary injunction. The following facts are within my personal knowledge and if called as a witness I am competent to testify thereto.

2. G & K Management Co., Inc. is a California corporation. Its principal office is located at 425 South Fairfax Avenue, Los Angeles, California 90036. It manages the Meyler Park Apartments, a 99-unit apartment project located in San Pedro, California. This project is owned by Meyler Park Apartments, a limited partnership, whose principal place of business is also located at 425 South Fairfax Avenue, Los Angeles, California 90036.

3. Meyler Park Apartments is a rental housing project designed for occupancy by lower income families and subsidized by the Department of Housing and Urban Development (HUD) under Section 236 of the National Housing Act, 12 USC § 1715z-1. The project is designated by the Federal Housing Administration (FHA) as Project No. 122-44537-LDP. Rentals are established and regulated pursuant to the Regulatory Agreement for Limited Distribution Mortgagors under Section 236 of the National Housing Act, as Amended (hereafter "the Regulatory Agreement"), dated December 1, 1971, between Meyler Park Apartments, a limited partnership, and the Secretary of HUD. A true copy of the Regulatory Agreement is attached hereto as Private Defendants' Exhibit One.

4. Of the 99 units in the project, 98 consist of one-bedroom apartments, and one is a two-bedroom apartment which is also the office of the resident manager and which produces no rental income. All utilities except telephone are paid directly by the Project Owner. Construction of the project was completed and the apartments authorized by the FHA for occupancy in July, 1972. Basic monthly rental per unit was initially established at $105.32. A copy of the Rental Schedule and Information on Rental Project (FHA Form 2458), dated March 27, 1972, which was submitted by the Project Owner to the FHA, is attached hereto as Private Defendants' Exhibit Two. This Rental Schedule was approved by the FHA on December 20, 1971. The fair market rental of each unit was initially established at $154.20. The project was fully occupied, allowing for a 5% vacancy factor, in October, 1972.

5. On August 7, 1974, the Project Owner applied to HUD for a rental increase of $10.68 per unit at the proj-

ect necessitated by increased utility, payroll, repairs and ground maintenance costs. This rental increase was approved by HUD on September 16, 1974. A copy of this application and of the letter authorizing this increase, together with the approved Rental Schedule, is attached hereto as Private Defendants' Exhibit Three. This rental increase was put into effect for all tenants at Meyler Park Apartments on November 1, 1974.

6. As a consequence of the November 1, 1974, rental increase, certain tenants were required to pay rent in excess of 25% of their adjusted monthly incomes, as defined in Section 236.2 of the Regulations issued by the FHA, 24 CFR § 236.2. G & K Management, Inc. is still in the process of determining the exact number of such tenants.

7. Effective August 22, 1974, Section 236 of the National Housing Act, was amended to require the Secretary of HUD to establish an initial operating expense level for the Meyler Park Apartments project not later than February 18, 1975, and to authorize the Secretary to make additional assistance payments (the "operating subsidy" referred to in the plaintiffs' complaint) to the project after that date. However, to my knowledge, the Secretary took no action to establish an initial operating expense level for the project, and has not done so as of the date of this affidavit.

8. On July 3, 1975, the Project Owner again applied to HUD for a rental increase of $15.00 per unit at the project necessitated by increases in maintenance expenses, utilities, labor repairs, real property taxes and to provide for a $3.00 per unit per month painting reserve. A copy of this application, together with the supporting documentation, is attached hereto as Private Defendants' Exhibit Four. Pursuant to this application, a rental increase of $12.00 per unit was approved by HUD on July 28, 1975. A copy of the letter authorizing such increase, together with the approved Rental Schedule, is attached hereto as Private Defendants' Exhibit Five.

9. On July 29, 1975, all tenants at Meyler Park Apartments were notified that the $12.00 per month approved rental increase would be made effective commencing Sep-

tember 1, 1975, and that an increase of $12.00 would be required in each tenant's security deposit. Certain of the tenants contacted the Legal Aid Foundation of Long Beach for the purpose of avoiding or delaying the imposition of this increase. As a result of discussions and negotiations between myself and attorney Ronald S. Javor of the Legal Aid Foundation, in early August, 1975, I contacted Mr. Irving Kaplan, Director of the Loan Management Branch of the Los Angeles office of HUD and requested additional assistance payments to the Project Owners on behalf of those tenants for whom the rental increase would result in their paying rent in excess of 25% of their adjusted monthly incomes. To my knowledge, HUD at that time had adopted no regulations providing any procedures for formal application for such funds, nor has it done so since. On August 11, 1975, I wrote to Mr. Kaplan requesting the release of funds for the project under the authority of the 1974 amendment to Section 236 of the National Housing Act. A copy of my letter setting forth this request is attached hereto as Private Defendants' Exhibit Six. Neither I nor the Project Owners ever received any response from HUD to my letter.

10. As a further result of my negotiations with Mr. Javor, on August 28, 1975, I entered into an agreement, on behalf of G & K Management Co., Inc., with the Legal Aid Foundation of Long Beach, cancelling the proposed security deposit increase for a period of one year and rescinding the proposed rental increase for a period of 60 days. The rescission of the rental increase was subsequently extended for an additional 30-day period after the commencement of this action.

11. Unquestionably, any rental increase at Meyler Park Apartments works a hardship on those tenants who, as a result of such increase, would be required to pay rent in excess of 25% of their adjusted family incomes, or else vacate their apartments in the project and attempt to find cheaper and less desirable housing elsewhere. With respect to some of the tenants in the project, I did manage to obtain rental assistance benefits for them from the City of Los Angeles Housing Authority under revised

Section 23 of the National Housing Act. The only assistance available for the remaining tenants, however, is the benefit of the operating subsidy provisions of Section 236.

12. By the same token, the rental increase, or additional assistance payments in an amount equal to the increase, is essential to the project in order to make it a viable business operation. For the fiscal year ending February 28, 1975, the project sustained a net loss of $41,831.00. The rental increase is necessary primarily because of increases in local real property taxes and utility rates over which management has absolutely no control. It is projected that such costs will inevitably increase in the future. Without the funds available under the operating subsidy provisions of Section 236, management will be unable to continue to operate the project for the class of tenants for which it was initially designed, and the whole purpose of the project will have to be abandoned.

/s/ Sherman Gardner
SHERMAN GARDNER

SUBSCRIBED AND SWORN to before me this 5th day of November, 1975.

/s/ Peggy L. Sirit [SEAL]
PEGGY L. SIRIT
Notary Public in and for
said county and state

My Commission Expires July 30, 1978

When recorded mail to:
HUD, Attn: H. Walton
2500 Wilshire Blvd.
Los Angeles, Calif.
90057

FHA FORM NO. 3136
Rev. 9/69
(Previous edition obsolete)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

REGULATORY AGREEMENT FOR LIMITED DISTRIBUTION MORTGAGORS UNDER SECTION 236 OF THE NATIONAL HOUSING ACT, AS AMENDED

Project No. 122-44537-LDP

Mortgagee UNION BANK

Amount of Mortgage Note $1,497,200.00 Date December 1, 1971

Mortgage Recorded: Concurrently herewith State California County Los Angeles Date

Book Page

This Agreement entered into this 1st day of December, 1971,

between MEYLER PARK APARTMENTS, a limited partnership,

whose address is Jona Goldrich
425 South Fairfax Avenue
Los Angeles, California 90036

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner).

In consideration of the endorsement for insurance by the Commissioner of the above described note or in consideration of the consent of the Commissioner to the transfer of the mortgaged property, and in order to comply with the requirements of Section 236 of the National Housing Act, as amended, and the Regulations adopted by the Commissioner pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

1. Owners, except as limited by paragraph 17 hereof, shall promptly make all payments due under the note and mortgage; provided, however, that the Commissioner shall make payments to the mortgagee on behalf of the Owners in accordance with the interest reduction contract between the mortgagee and the Commissioner.

2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Commissioner of an amount equal to $ 472.09 per month unless a different date or amount is approved in writing by the Commissioner. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Commissioner. In the event of a default in the terms of the Mortgage, pursuant to which the loan has been accelerated, the Commissioner may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

(b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved or required in writing by the Commissioner.

(c) Owners shall establish and maintain, in addition to the reserve fund for replacements, a residual receipts fund by depositing thereto, with the mortgagee, the residual receipts, as defined herein, within 60 days after the end of the semiannual or annual fiscal period within which such receipts are realized. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purpose as he may determine.

3. Real property covered by the mortgage and this Agreement is described in Schedule A attached hereto, consisting of one (1) page.

4. The Owners covenant and agree that:

(a) with the prior approval of the Commissioner, they will establish for each dwelling unit (1) a basic rental charge determined on the basis of operating the project with payments of principal and interest under a mortgage bearing interest at one percent and (2) a fair market rental charge determined on the basis of operating the project with payments of principal, interest and mortgage insurance premiums due under the insured mortgage on the project;

PRIVATE DEFENDANTS'
EXHIBIT ONE

(b) the rental charged for each unit, which will include all utilities except telephone, will be equal to 25% of the tenant's income or the basic rental, whichever is greater, but in no event shall the rental charged exceed the fair market rental;

(c) they shall limit admission to the project to those families whose incomes do not exceed the limits prescribed by the Commissioner, with the exception of those tenants who agree to pay fair market rental;

(d) preference for occupancy shall be given to those families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster, and to those families whose incomes are within the lowest practicable limits for obtaining rental units in the project;

(e) on forms approved by the Commissioner they will obtain from each prospective tenant, prior to admission to the project, a certification of income, and a recertification of income from all tenants who are not paying fair market rental at intervals as required by the Commissioner;

(f) if any recertification reveals a change in income whereby the tenant becomes eligible for a lower or higher rental, such adjustment in rental charged shall be made, provided that rental shall never be less than basic rental and shall never exceed fair market rental;

(g) in a manner prescribed by the Commissioner, they will obtain written evidence substantiating the information given on the tenants' certifications and recertifications of income and shall retain the evidence in their files for three years;

(h) they shall require all tenants who do not pay the fair market rental to execute a lease in the form prescribed by the Commissioner, and shall not rent any unit in the project for less than 30 days nor more than one year; (i) beginning with the commencement of the interest reduction payment contract they shall remit to the Commissioner on or before the tenth day of each month the amount by which the total rentals collected on the dwelling units exceeds the sum of the approved basic rentals for all occupied units, which remittance shall be accompanied by a monthly report on a form approved by the Commissioner, provided that a monthly report must be filed even if no remittance is required;

(j) they shall not restrict occupancy by reason of the fact that there are children in the family, except in those projects that are designed primarily for elderly persons;

(k) they will rent commercial facilities, if any, at not less than the rental approved by the Commissioner;

(l) no change will be made in the basic rental or fair market rental unless approved by the Commissioner;

(m) no tenant shall be permitted to rent more than one unit at any given time without the prior written approval of the Commissioner;

(n) if there are rent supplement units in the project, the determination as to the eligibility of tenants for admission to such units and the conditions of continued occupancy shall be in accordance with the Rent Supplement Contract executed by the Owners and the Commissioner which is incorporated in and made a part of this Agreement.

5. Upon prior written approval of the Commissioner, the Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owner or others to such tenant upon his request, in addition to the facilities and services included in the approved Rental Schedule.

6. Owners shall not without the prior written approval of the Commissioner:

(a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property;

(b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds, other than from surplus cash, except for reasonable operating expenses and necessary repairs;

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the mortgaged property, or the interest of any general partner in a partnership owning the mortgaged property, or any right to manage or receive the rents and profits from the mortgaged property;

(d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;

(e) Make, or receive and retain, any distribution of assets or any income of any kind of the project, except from surplus cash and except on the following conditions:

(1) All distributions shall be made only as of or after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction; all such distributions in any one fiscal year shall be limited to six per centum on the initial equity investment, as determined by the Commissioner; and the right to such distribution shall be cumulative;

PRIVATE DEFENDANTS' EXHIBIT ONE

(2) No distribution shall be made from borrowed funds or prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;

(3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds;

(4) There shall have been compliance with all outstanding notices of requirements for proper maintainance of the project.

(f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project;

(g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any fund collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account;

(h) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Commissioner;

(i) Incur any liability, direct or contingent, other than for current operating expenses, exclusive of the indebtedness secured by the mortgage and necessarily incident to the execution and delivery thereof;

(j) Pay any compensation, including wages or salaries, or incur any obligations, to themselves, or any officers, directors, stockholders, trustees, partners, beneficiaries under a trust, or to any of their nominees;

(k) Enter into any contract or contracts for supervisory or managerial services.

7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the insured mortgage.

8. Owners shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five days.

9. (a) Owners shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by Owners, or any of them, involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Commissioner addressed to the Owners. Upon receipt of such request Owners shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his duly authorized agents.

(d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Commissioner.

(e) Within sixty days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner certified to by an officer or responsible Owner and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.

(f) At the request of the Commissioner, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.

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PRIVATE DEFENDANTS' EXHIBIT ONE

A. 111

(g) All rents and other receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project, remittances to the Commissioner as required under Paragraph 4(i) above, or for distributions of surplus cash as limited by Paragraph 6(e) above. Any owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any owner receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.

10. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part 1) issued pursuant to that title, and regulations issued pursuant to Executive Order 11063.

11. Upon a violation of any of the above provisions of this Agreement by Owners, the Commissioner may give written notice, thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Commissioner, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Commissioner within thirty days after the date such notice is mailed or within such further time as the Commissioner reasonably determines is necessary to correct the violation, without further notice the Commissioner may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Commissioner may:

(a)(1) If the Commissioner holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;

(2) If said note is not held by the Commissioner - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and the holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations;

(b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the mortgagor's obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project;

(c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Commissioner in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage;

(d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;

(e) Terminate the interest reduction payments to the mortgagee made pursuant to Paragraph 1 hereinabove.

12. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Commissioner because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Commissioner their rights to the rents, profits, income and charges of whatever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

13. As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the note identified herein, and endorsed for insurance or held by the Commissioner;

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Mortgagor" means the original borrower under the mortgage and its successors and assigns;

(d) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors and assigns;

PRIVATE DEFENDANTS' EXHIBIT ONE

(e) "Mortgaged Property" includes all property, real, personal, or mixed covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Commissioner;

(f) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is to provide housing and other such activities as are incidental thereto;

(g) "Surplus Cash" means any cash remaining after:

(1) the payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Federal Housing Commissioner;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner;

(iv) Remittances due to the Commissioner as required by Paragraph 4(i); and

(2) the segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held;

(iii) That portion of rentals which must be remitted to the Commissioner in accordance with Paragraph 4(i), but not yet due.

(h) "Residual Receipts" means any cash remaining at the end of a semiannual or annual fiscal period after deducting from surplus cash the amount of all distributions as that term is defined below and as limited by Paragraph 6(e) hereof;

(i) "Family" means (1) two or more persons related by blood, marriage, or operation of law, who occupy the same unit; (2) a handicapped person who has a physical impairment which is expected to be of long continued and indefinite duration, substantially impedes his ability to live independently, and is of such a nature that his ability to live independently could be improved by more suitable housing conditions; (3) a single person, 62 years of age or older; or (4) a single person less than 62 years of age provided that occupancy by such persons is limited to 10% of the dwelling units in the project;

(j) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project;

(k) "Income" means the gross annual income of the family from all sources before taxes and withholding, after giving effect to exclusions allowed by the Commissioner;

(l) "Default" means a default declared by the Commissioner when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Commissioner after written notice.

14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Commissioner and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

16. The invalidity of any clause, part or provision of this Agreement shall not effect the validity of the remaining portions thereof.

17. The following ~~xxxxx~~ partners of the Owner: Jona Goldrich as trustee, Sol Kest as trustee, R. Stern and Robert Hirsch (and all hereafter admitted partners) do not assume personal liability for payments due under the note and mortgage, to the reserve for replacements, or for matters not under their control, except:

(a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and

(b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

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PRIVATE DEFENDANTS' EXHIBIT ONE

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first hereinabove written.

MEYLER PARK APARTMENTS,
a limited partnership
Owners

Seal

WITNESS

By _____
R. Stern General Partner

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
acting by and through the FEDERAL HOUSING
COMMISSIONER

By _____
Authorized Agent

(Add proper acknowledgments)

STATE OF CALIFORNIA)
: ss.
COUNTY OF LOS ANGELES)

On DECEMBER 27, 1971, before me, the undersigned, a Notary Public in and for said State, personally appeared R. STERN, known to me to be one of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

Signature _____

OFFICIAL SEAL
ALAN D. ROSS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
[illegible] COUNTY
My Commission Expires Feb. 27, 1972

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PRIVATE DEFENDANTS' EXHIBIT ONE

Schedule A

Legal Description for FHA Project No. 122-44537-LDP

PARCEL 1:
The land referred to in this report is situated in the county of Los Angeles, state of California, and is described as follows:

Lot 14 in Block "V" of Valambrosa Tract, in the city of Los Angeles, County of Los Angeles, state of California, as per map recorded in Book 10 Page 109 of Maps, in the office of the County Recorder of said county.

Except the westerly 20 feet thereof and except all that portion of said lot 14 being a strip of land 10 feet wide extending from the northerly line to the southerly line of said lot; the westerly line of said strip being 2 feet easterly from and measured at right angles to and parallel with the prolongation southerly of the westerly line of Meyler Street shown on map of said Valambrosa Tract.

PARCEL 2:
That portion of lot number, in Roman numerals, "II" on the plat of the subdivision of Lot "M" of original partition of the Rancho Los Palos Verdes, partly in the City of Los Angeles, in the County of Los Angeles, State of California, as shown on the map filed in Book 1 page 47 of record of surveys' in the office of the County Recorder of said county, described as follows:

That portion of the 34 foot strip of land described in the deed from John T. Gaffey and wife, to Pacific Electric Land Company, recorded in Book 3078 Page 241 of deeds, records of said county, lying easterly of the southerly prolongation of the westerly line of Meyler Street, as shown on the map of Valambrosa Tract recorded in Book 10 Page 109 of Maps, in the office of said County Recorder.

Except that portion thereof lying southerly of the northerly line of Fifth Street as shown on the map of the Mirador Tract, recorded in Book 2 Page 39 of Maps, records of said county.

PARCEL 3.
That portion of La Alameda Alley, lying southerly of the Pacific Electric Railroad right of way, as said right of way is shown 34 feet wide on the map of Mirador Tract No. 3, in the city of Los Angeles, county of Los Angeles, state of California, as per map recorded in Book 5 Page 84 of Maps, in the office of the County Recorder of said county, bounded southerly by the westerly prolongation of the easterly line of Meyler Street, as said street is shown 70 feet wide on said map; and bounded southeasterly by the easterly prolongation of the northerly line of Fifth Street as said street is shown 60 feet wide on said map.

Excepting from the above parcels 1, 2 and 3, all mineral, oil, gas, petroleum, naptha and other hydrocarbon substances, without any right to enter upon the surface nor upon the subsurface to a depth of 500 feet "measured vertically" below the present surface of said land as granted to Jona Goldrich, as Trustee of the Goldrich Trust No. 1, dated August 4, 1971, Sol Kest, as Trustee of the Kest Trust No. 1, dated April 1, 1971, Robert Hirsch, and Robert I. Stern each as to an undivided one-fourth -1/4- interest, by deed recorded December , 1971 as Instrument No.

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1 and only page of Schedule A

PRIVATE DEFENDANTS' EXHIBIT ONE

FHA FORM NO. 3452
Rev. 6/66

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

Form Approved
Budget Bureau No. 63-R118.5

RENTAL SCHEDULE AND INFORMATION ON RENTAL PROJECT

Name of Project Owner (Mortgagor)	FHA Project No.
HEYLER PARK APARTMENTS	122-44537-LDP

Name of Project	Address of Principal Office
HEYLER PARK APARTMENTS	425 So. Fairfax Avenue, Suite 300 Los Angeles, California 90036

Name, Title and Address of Representative to Whom Correspondence should be addressed	Fiscal Year of Project

TYPE OF MORTGAGOR ENTITY: 1. ☐ Corporation 2. ☒ Partnership 3. ☐ Joint Venture
4. ☐ Tenants in Common 5. ☐ Trust 6. ☐ Individual 7. ☐ Other (Specify)

LIST OF PRINCIPALS COMPRISING MORTGAGOR ENTITY -- (Instructions for completion: In Listing principals, give name and Social Security number. 1. Corporation: List all officers and directors, and stockholders holding at least a 10% interest, stating number of shares and type of stock held by each. If another legal entity is stockholder, list its name, type of entity, and principals as required herein. If stock is known to be encumbered in any manner, state manner and reasons for encumbrances. List name and address of Corporate Resident Agent, if any; 2. Partnership, 3. Joint Venture and 4. Tenants in Common: List all general partners, joint venturers or tenants in common. Designate and give the address of the general partner, joint venturer or tenant in common, whom FHA may hold responsible for fulfillment of the mortgagor's obligations and responsibilities. If any general partner, joint venturer or tenant in common is a corporation or trust, give information required herein for such entity; 5. Trust: List all beneficiaries having at least a 10% interest, as well as managers, directors, or trustees. Give the address of such official whom FHA may hold responsible for fulfillment of the mortgagor's obligations and responsibilities. --- If space below is insufficient, continue listing on an attached sheet.)

JONA GOLDRICH, 722 North Alta Drive, Beverly Hills, Ca.	35%	95-6331077
as Trustee of the Goldrich Trust No. 1., dated August 4, 1971		
SOL KEST, 6601 Drexel Avenue, Los Angeles, Ca. 90048	25%	95-6305738
as Trustee of the Kest Trust, No. 1., dated April 1, 1971		
ROBERT HIRSCH, 4961 Densmore Avenue, Encino, Ca. 91316	15%	359-22-4911
ROBERT I. STERN, 3531 Summerfield Drive, Sherman Oaks, Ca. 91403	25%	568-20-0687

(Complete all information on Reverse Side)

RENTAL SCHEDULE FOR INCOME PRODUCING SPACE-DWELLINGS NOT INCLUDING FURNITURE RENTS

Type of Unit	Unit Composition (Insert Description)*	Column 1 No. of Units	Column 1 Rental Rate	Column 1 Total Monthly Income	Column 2 No. of Units	Column 2 Rental Rate	Column 2 Total Monthly Income	Column 3 No. of Units	Column 3 Rental Rate	Column 3 Total Monthly Income
Efficiency			$	$		$	$		$	$
0-Bedroom										
1-Bedroom	LR, DA, K, 1 BR, 1 B	93	105.32	10321.36						
2-Bedroom										
3-Bedroom										
4-Bedroom										
TOTALS →				$ 10321.36			$			$

*USE THE FOLLOWING SYMBOLS:
LU - LIVING UNIT K - KITCHEN
LR - LIVING ROOM KETTE - KITCHENETTE
DR - DINING ROOM BR - BEDROOM
DA - DINING ALCOVE B - BATH

EXAMPLE: LR - DA - K - 2 BR - 1 B

TOTALS FROM COL. 1		$ 10321.36
TOTALS FROM COL. 2		$
TOTAL UNITS AND GROSS MONTHLY DWELLING INCOME		$ 10321.36
GROSS POTENTIAL ANNUAL DWELLING RENT INCOME		$ 123856.32

SERVICES AND EQUIPMENT INCLUDED IN RENT: (Check appropriate boxes)

- [x] Ranges
- [x] Garbage Disposals
- [ ] Space Heat
- [x] Gas
- [x] Air Conditioning Units
- [ ] Power Including
- [x] Refrigerators
- [x] Laundry Facilities
- [x] Water (Hot and Cold)
- [x] Electricity
- [x] Carpets
- [x] x Drapes
- [ ] Dishwashers
- [ ] Central Heat
- [ ] Water (Cold only)
- [ ] Central Air Conditioning
- [x] ~~Kitchen Exhaust Fan~~

OTHER INCOME PRODUCING SPACE:

Type	No. in Project	Number of Units & Unit Rent Per Month					
		Units	@ $	Units	@ $	Units	$
Garages							
Stores							
Offices							
Laundry							148.50

NON-REVENUE PRODUCING DWELLING SPACES:

Composition of Unit (Insert Description)	No. of Each Type Unit	Per Annum Rental Value Assigned Unit Type	Use (Janitor, Office, Resident Manager, etc.)
LR, DA, K, 2 BR, 1 B, Office	1	$ 1504.68	Office

I hereby certify that (1) the information contained on page 1 and 2 is complete, correct, to in accordance with the owner's records, and (2) no increases in approved dwelling rentals will be made without prior written consent of the Federal Housing Administration.

Date March 27, 19 72 Signature [signature]

Title Jona Goldrich, Partner

92172-P Rev. 6/68

[illegible], D. C.

PRIVATE DEFENDANTS' EXHIBIT TWO

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COPY

August 7, 1974

Mr. Irving Kaplan,
Director of Loan Management Division
Dept. of Housing & Urban Development
2500 Wilshire Boulevard
Los Angeles, California 90057

Subject: Meyler Park Apartments
San Pedro, California
FHA Project No. 122-44537-LDP

Dear Mr. Kaplan:

We have just completed a projection of the operations of the captioned complex. This projection is based on the actual operations for the year ended February 28, 1974 and anticipated increased costs.

Using the statement of income for the twelve months and adjusting the net loss for depreciation, mortgage amortization, reserve for replacement payments and the allowed dividend yields a net cash loss of $5,460. To this loss, we have added adjustments for property taxes and utility cost increases as follows:

Cash loss (per attached statement)	$ 5,460
Property tax increase (per statement $17,933; per 1973/1974 tax bill $24,730)	6,797
Anticipated utility cost increases	1,500
Projected Cash Loss	$13,757

In order to offset the cash loss incurred and to effectively cope with the projected loss, it will be necessary to increase rents as follows:

98 One Bedroom Apartments	
Present Rent	$105.32
Requested Increase	14.68
Proposed Rent	$120.00

Continued on Page 2.

PRIVATE DEFENDANT'S EXHIBIT THREE

ross potential
.cancies

As you know, this complex has been run quite effectively and it is our intention to continue the good work. Based upon the above analysis, we will be forced to operate at a deficit. In order to continue operating at the high standards we impose upon ourselves, it is imperative that this proposed rent increase be granted.

Enclosed for your review is a copy of the notice to residents as posted. Please be advised that we have received no written comments or objections at this time.

We, the undersigned, hereby submit the data, material and information contained herein and in the attachments hereto for the purpose of obtaining the approval of the U. S. Department of Housing and Urban Development of the rent increase herein proposed and we certify under the penalties and provisions of Title 18, United States Code, Sections 1001 and 1010 that the statements contained in the rent increase application, this certification and the attachments hereto have been examined by us and are true, correct and complete.

Very truly yours,

MEYLER PARK APARTMENTS

Warren Breslow,
Director of Finance

WLB/lp
Enclosures

PRIVATE DEFENDANTS'S EXHIBIT THREE

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COPY

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
LOS ANGELES AREA OFFICE
2500 WILSHIRE BOULEVARD, LOS ANGELES, CALIFORNIA 90057

September 16, 1974

REGION IX
450 Golden Gate Avenue
P.O. Box 36003
San Francisco, California 94102

IN REPLY REFER TO:
9.2HL -Bullock
688 - 5844

Goldrich & Kest
425 So. Fairfax Avenue
Los Angeles, California 90036

Gentlemen:

Subject: Project No. 122-44537-LMP
Meyler Park Apartments

We are approving a rental increase at subject project because of increased utility, payroll, repairs and ground maintenance costs.

Enclosed is your approved copy of HUD 92458, Rental Schedule for this project. The equipment and services marked on this form are required to be provided as a condition of this approval.

The approved maximum annual gross rental is $133,072 including garages and all services. This represents a [illegible] percentage increase over the previous annual gross of $[illegible].

		The Basic Rent Per Month is:	The Unit Market Rent Per Month is:
1	Bedroom	$ 116.00	$ 178.00
2	Bedroom	$ 139.00	$ 202.00
3	Bedroom	$ N/A	$ N/A
4	Bedroom	$ N/A	$ N/A
____	Bedroom	$	$

As a condition of the approval you are required to comply with applicable state laws with respect to: notification to tenants, and to post a copy of this letter in the same or similar conspicuous public places that the Notice to Tenants of Proposed Application for Rent Increases had been posted. This approval is subject to such letter being posted for not less than thirty (30) days prior to the effective date of the rent increase. The effective date of this increase can be no sooner than October 16, 1974.

For Director
Director
Loan Management Branch

Enclosure

PRIVATE DEFENDANTS'S EXHIBIT THREE
-17-

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Type of Unit	Unit Composition (Room Designation)	No. of Units	Rental Rate	Total Monthly Income	No. of Units	Rental Rate	Total Monthly Income	No. of Units	Rental Rate	Total
Efficiency			$	$		$	$		$	$
1-Bedroom										
	LR,DA,K,1BR.,B.	63	112	7,056				2	[illegible]	[illegible]
1-Bedroom	B									
	LR,DA,K,2BR.,	1	169	169				1	169	
2-Bedroom	B									
2-Bedroom										
2-Bedroom										
TOTALS →			$	11,606		$			$	

Director, Team Management

USE THE FOLLOWING SYMBOLS:
LU - LIVING UNIT K - KITCHEN
LR - LIVING ROOM KETTE - KITCHENETTE
DR - DINING ROOM BR - BEDROOM
DA - DINING ALCOVE B - BATH

EXAMPLE: LR - DA - K - 2 BR - 1 B

TOTALS FROM COL. 1	$ 11,6
TOTALS FROM COL. 2	$
TOTAL UNITS AND GROSS MONTHLY DWELLING INCOME	$ 11,6
GROSS POTENTIAL ANNUAL DWELLING RENT INCOME	$139,2

EQUIPMENT AND SERVICES INCLUDED IN RENT: (Check Appropriate Items)

EQUIPMENT –
- [ ] Ranges (Gas or Elec.)
- [ ] Refrig. (Gas or Elec.)
- [ ] Air Cond. (Equip. Only)
- [ ] Kitchen Exhaust Fan
- [ ] Laundry Facilities
- [X] Disposal
- [ ] Dishwasher
- [X] Carpet
- [X] Drapes
- [ ] Other (Specify)

SERVICES –
GAS: [ ] Heat [X] Hot Water [X] Cooking [ ] Air Conditioning
ELECT: [ ] Heat [ ] Hot Water [ ] Cooking [ ] Air Conditioning [X] Lights, etc. in Unit
OTHER FUEL: [ ] Heat [ ] Hot Water
[X] WATER [X] OTHER [illegible]

OTHER INCOME PRODUCING SPACES:

Type	No. in Project	Number of Units / Unit Rent Per Month					
Garages		Units	$	Units	$	Units	$
Stores							
Offices							

NON-REVENUE PRODUCING DWELLING SPACES:

Composition of Unit (Room Description)	No. of Each Type Unit	Per Annum Rental Value Assigned Unit Type	Use (Janitor, Office, Resident Manager, etc.)
LR,DA,K,2BR.,B.	1	$ 1,656	Manager

I hereby certify that (1) the information contained on page 1 and 2 is complete, correct, and in accordance with the owner's records; (2) no increases in approved dwelling rentals will be made without prior written consent of HUD.

Date: September 9, 1974

Signature [illegible]

Title [illegible] Project Manager

(If corporation, must be executed by officer or agent thereof)

RECEIVED
JUL 7 1975
C & K MANAGEMENT

July 3, 1975

Mr. Irving Kaplan
Director of Loan Management Branch
Dept. of Housing & Urban Development
2500 Wilshire Boulevard
Los Angeles, California 90057

Attention: Mr. Herb Goldstein

Subject: Meyler Park Apartments
FHA Project No. 122-44537-LDP

Dear Mr. Goldstein:

We have recently completed a review of the operations of the captioned complex. This analysis was based upon the actual operations for the year ended February 28, 1975.

The statement of income and expenses for the 12 months shows a cash loss, including the limited dividend, of approximately $11,500. Unpaid cumulative dividends as of February 28, 1975, amounted to $19,953.

In order to offset the loss incurred, effectively cope with projected increased costs and provide for a $3.00 per unit, per month, painting reserve, it will be necessary to increase rents as follows:

	Present Rent	Proposed Increase	Proposed Rent
One Bedroom	$116.00	$15.00	$131.00

Also enclosed is a copy of the notice to residents as posted. Please be advised that we have received several written comments and objections as of this date. These objections relate to the residents' inability to afford a rental increase.

PRIVATE DEFENDANTS' EXHIBIT FOUR
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We, the undersigned, hereby certify that a notice of Proposed Application for Rent Increase was posted in three or more conspicuous places in each structure of the complex. Said notices were posted on or about May 27, 1975, and remained posted for at least 30 days hence. Said notice advised residents that an application for rental increase was to be filed in 30 days with the Department of Housing and Urban Development. Further, it advised residents of the reason and that all the data which we proposed to submit to HUD in justification for the proposed rent increase would be available for their inspection. We have complied with any and all requests by the residents to inspect said data. Said notice advised residents that they could submit to us and/or to the Department of Housing and Urban Development written comments or objections to the proposed rent increase.

We, the undersigned, hereby submit the data, material and information contained herein and in the attachments hereto for the purpose of obtaining the approval of the U.S. Department of Housing and Urban Development of the rent increase herein proposed and we certify under penalties and provisions of Title 18, United States Code, Sections 1001 and 1010 that the statements contained in the rent increase application, this certification and the attachments hereto have been examined by us and are true, correct and complete.

Very truly yours,

HEYLER PARK APARTMENTS

Warren L. Breslow
Director of Finance

WLB/ll
Encl.

PRIVATE DEFENDANTS' EXHIBIT FOUR

MEYLER PARK APARTMENTS
PROJECT NO. 122-44337-LDP
STATEMENT OF INCOME
YEAR ENDED FEBRUARY 28, 1975

INCOME			
Rents - gross potential (Note 5)	$129,081		
Less: vacancies	---	$129,081	
Service income		1,044	
Interest income		199	
TOTAL INCOME			$130,324
EXPENSES			
Renting expense (Schedule D)		1,929	
Administrative expense (Schedule D)		15,006	
Operating expense (Schedule D)		16,917	
Maintenance expense (Schedule D)		18,040	
Depreciation			
Buildings	45,117		
Carpeting, draperies and equipment	7,129	52,246	
Taxes and insurance			
Property taxes	26,724		
Licenses	180		
Payroll taxes	748		
Insurance	1,096	28,748	
Financial expense			
Interest on mortgage	30,540		
Insurance on mortgage	8,739	39,279	
TOTAL EXPENSES			172,165
NET LOSS			$(41,841)

See auditors' report and notes to financial statements.

NANAS, STERN, BIERS AND CO.
CERTIFIED PUBLIC ACCOUNTANTS · BEVERLY HILLS

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PRIVATE DEFENDANTS'S EXHIBIT FOUR

MEYLER PARK APARTMENTS
PROJECT NO. 122-44537-LDP
SCHEDULE OF EXPENSES
YEAR ENDED FEBRUARY 28, 1975

RENTING EXPENSE		
Advertising	$ 1,148	
Miscellaneous	781	
TOTAL RENTING EXPENSE		$ 1,929
ADMINISTRATIVE EXPENSE		
Office salaries	1,148	
Office expense	709	
Management fees	8,944	
Manager's salary - value of apartment included in gross rents (Note 5)	1,307	
Auditing expense	2,380	
Telephone and telegraph	455	
Miscellaneous	63	
TOTAL ADMINISTRATIVE EXPENSE		$15,006
OPERATING EXPENSE		
Janitor's payroll	1,530	
Electricity	8,901	
Water	2,506	
Gas	3,035	
Exterminating	216	
Rubbish removal	729	
TOTAL OPERATING EXPENSE		$16,917
MAINTENANCE EXPENSE		
Grounds supplies and replacements	122	
Grounds contract	7,746	
Repairs payroll	1,530	
Repairs material	2,012	
Repairs contract	2,411	
Elevator maintenance	1,303	
Air conditioning repair and maintenance	1,386	
Decorating payroll	1,530	
TOTAL MAINTENANCE EXPENSE		$18,040

See auditors' report and notes to financial statements.

NANAS, STERN, BIERS AND CO.
CERTIFIED PUBLIC ACCOUNTANTS · BEVERLY HILLS

PRIVATE DEFENDANTS' EXHIBIT FOUR

G & K
Management Co., Inc.
425 S. Fairfax Ave., Suite 300, Los Angeles, Calif. 90036

Thomas Gordon
President

NOTICE TO RESIDENTS OF INTENTION TO FILE AN APPLICATION TO HUD FOR AN INCREASE IN THE MAXIMUM PERMISSIBLE RENTS

May 29, 1975
Date of Posting

This is to advise you that 30 days from the date of posting noted above, we plan to file an application for approval of an increase in the maximum permissible rents for Meyler Park Apartments to the United States Department of Housing and Urban Development (HUD). The proposed increase is needed for the following reasons:

1. Utility costs have increased dramatically
2. Property taxes have increased
3. Repairs and maintenance have increased

The rent increases for which we plan to apply are:

Bedrooms	Present Rate Basic	Proposed Increase	Proposed Rent Basic
1	$116.00	$15.00	$131.00

Please note that included in this proposed increase is $3.00 per unit to establish a painting reserve for future exterior painting of the buildings.

All materials that we intend to submit to HUD in support of our application will be available during normal business hours at the project office for a period of 30 days from the date of posting of this NOTICE for inspection and copying by residents of Meyler Park Apartments.

Residents of Meyler Park Apartments may submit comments in writing for or against the rental increase to us at 425 South Fairfax Avenue, Suite 300, Los Angeles, California 90036. These will be transmitted to HUD with our application for an increase. You may also send a copy of your comments directly to HUD, at the following address:

U.S. Department of Housing and Urban Development
2500 Wilshire Boulevard
Los Angeles, California 90057

Attention: Director, Loan Management Division
Re: FHA Project No. 122-44537-LDP
Meyler Park Apartments

Specialists in real property management

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PRIVATE DEFENDANTS'S EXHIBIT FOUR

G & K
Management Co., Inc.
[illegible] Fairfax Ave., Suite [illegible] Los Angeles, Calif. [illegible]

HUD may approve all, some, or none of the proposed rental increase. When HUD advises us in writing of its decision on our application, you will be notified at least 30 days before any allowable increase is put into effect. For those residents who are currently under leases with a term of more than a month, any allowable rent increase will not take place until the end of the term of the lease.

Sincerely,

G & K MANAGEMENT CO., INC.

Sherman Gardner
President

MEYLER PARK APARTMENTS
San Pedro, Calif.

July 23, 1975

Meyler Park Apartments
c/o Goldrich & Kest
425 So. Fairfax Avenue
Los Angeles, California 90036

Subject: Project No. 122-44537-LCP
Meyler Park Apartments

We are approving a rental increase at subject project because of demonstrated increases in elevator maintenance expense, utilities, labor repairs, real estate taxes, and exterior painting reserve subject to obtaining an increase in rent supplement funds.

Enclosed is your approved copy of HUD 92458, Rental Schedule for this project. The equipment and services marked on this form are required to be provided as a condition of this approval.

The approved maximum annual gross rental is $152,352 including garages and all services. This represents a 11 percent increase over the previous annual gross of $ 138,072 .

	The Basic Rent Per Month is:	The Unit Market Rent Per Month is:
1 Bedroom	$ 128	$ 190
2 Bedroom	$ 152	$ 225
____ Bedroom	$	$
____ Bedroom	$	$
____ Bedroom	$	$

As a condition of the approval you are required to comply with applicable state laws with respect to notification to tenants. You are required to post a copy of this letter in the same or similar conspicuous public places that the Notice to Tenants of Proposed Application for Rent Increase had been posted. This approval is subject to such letter being posted for not less than thirty (30) days prior to the effective date of the rent increase. The effective date of this increase can be no sooner than September 1, 1975 .

Sincerely,

Director
Loan Management Branch

Enclosure LA FL 64 (6/75)

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PRIVATE-DEFENDANTS' EXHIBIT FIVE

RENTAL SCHEDULE AND INFORMATION ON RENTAL PROJECT

Project Owner (Mortgagor)	Project No.
ER PARK APARTMENTS	122-44233
Project	**Address of Principal Office**
ER PARK APARTMENTS	425 So. Fairfax Avenue Los Angeles, California 90036
Name and Address of Representative to Whom Correspondence should be addressed	Fiscal Year of Project

OF MORTGAGOR ENTITY: 1. ☐ Corporation 2. ☒ Partnership 3. ☐ Joint Venture
Tenants in Common 5. ☐ Trust 6. ☐ Individual 7. ☐ Other _____

IF PRINCIPALS COMPRISING MORTGAGOR ENTITY --(Instructions for completion: In Column marginals [illegible] name and home address. 1. Corporation: List all officers and directors, and stockholders holding at least a 10% interest, stating number of shares of stock held by each. If another legal entity is stockholder, list its name, type of entity, and principals as required herein. If known to be encumbered in any manner, state manner and reasons for encumbrance. List name and address of Corporate Secretary, if any. 2. Partnership. 3. Joint Venture and 4. Tenants in Common: List all general partners, joint venturers or tenants in common and give the address of the general partner, joint venturer or tenant in common, upon whom HUD may hold responsible for fulfillment of mortgagor's obligations and responsibilities. If any general partner, joint venturer or tenant in common is a corporation or trust, formation required herein for such entity. 5. Trust: List all beneficiaries having at least a 10% interest, as well as managers, directors, trustees. Give the address of such official whom HUD may hold responsible for fulfillment of the mortgagor's obligations and responsibilities. --- If space below is insufficient, continue listing on an attached sheet.)

a Goldrich, Trustee		
oldrich Trust No.1, 9/4/71	425 So. Fairfax Avenue. Los Angeles, CA	SS# 036-03-1493
Kest, Trustee		
est Trust No. 1, 4/1/71	425 So. Fairfax Ave. Los Angeles, CA	SS# 563-60-3123
ert I. Stern	3725 Crown Ridge Dr.Sherman Oaks, CA	SS# 568-01-1437
ert Hirsch	4961 Densmore Ave. Encino, CA	SS# 359-01-4221

Unit Composition (Room Description)									
TOTALS →			$12,696		$			$	

THE FOLLOWING SYMBOLS:
- LIVING UNIT
- LIVING ROOM
- DINING ROOM
- DINING ALCOVE
- KITCHEN
- KETTE-KITCHENETTE
- BR - BEDROOM
- B - BATH

PLE: LR - DA - K - 2 BR - 1 B

TOTALS FROM COL. 1	$12,696
TOTALS FROM COL. 2	$
TOTAL UNITS AND GROSS MONTHLY DWELLING INCOME	$12,696
GROSS POTENTIAL ANNUAL DWELLING RENT INCOME	$152,352

MENT AND SERVICES INCLUDED IN RENT: (Check Appropriate Items)

MENT —
- ...ange (Gas or Elec.)
- ...ship. (Gas or Elec.)
- ...r Cond. (Equip. Only)
- ...chen Exhaust Fan
- ...undry Facilities
- ...R INCOME PRODUCING SPACE

- Disposal
- Dishwasher
- Carpet
- Drapes
- Other (Specify)

SERVICES —
GAS: Heat, Cooking, Hot Water, Air Conditioning
ELECT: Heat, Cooking, Hot Water, Air Conditioning, Lights, etc. in Unit
OTHER FUEL: Heat, Hot Water
WATER, OTHER: Trash Disp.

...Type	Name Project	Number of Units and Rent Per Week					
		Units	$	Units	$	Units	$

REVENUE PRODUCING DWELLING SPACES:

...Composition of Unit (Room Description)	No. of Each Type Unit	Per Annum Rental Value Assigned Unit Type	Use (Tenant, Office, Resident Manager, etc.)
...DA, K, 2 BR, 3	1	$ 1,824	Manager

...hereby certify that (1) the information contained on page 1 and 2 is correct, true and complete in accordance with the owner's records, and (2) the increases in approved dwelling rentals will be made without prior written consent of HUD.

July 28, 19 75

Signature

Title

PRIVATE DEFENDANT'S EXHIBIT FIVE

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G.I.K.
Management Co., Inc.
4311 Wilshire Blvd., Suite 301, Los Angeles, Calif. 90010 (213) 936-7477

August 11, 1975

Mr. Irving Kaplan, Director
Loan Management Branch
Department of Housing and Urban Development
2500 Wilshire Boulevard
Los Angeles, CA 90057

Re: Meyler Park Apartments
FHA Project No.122-44537-LDP

Dear Mr. Kaplan:

In accordance with our recent conversations regarding provisions stated in Section 212F3, I am requesting the release of such funds for utilization at the subject complex to compensate for excessive increases in utilities (water, gas and electricity) and property taxes.

Since September 1972, these utilities have increased at an alarming rate of approximately $500.00 per month.

Also, in the fiscal period from March 1973 to March 1974, property taxes for Meyler Park increased $2300.00. We have not yet received the tax bill for the current fiscal period, however taxes on the subject property have increased each successive year and it is anticipated this year will not be an exception.

In view of the above described increases, your assistance is requested in facilitating the release of Assistance Payments funds provided for this purpose to compensate for these rising costs and to avoid imposing this burden on the Meyler Park residents in the form of a rental increase.

Very truly yours,

Sherman Gardner
President

PRIVATE DEFENDANTS' EXHIBIT SIX

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SG:jp

specialists in real property management

EXHIBIT Y- CHART SHOWING 314.16' RIDE PER 1 INCH OF UTILITY AND PROPERTY TAX COSTS

	INITIAL OPERATING COST (I.O.C.) * (1972-3)					3/1/73 - 2/28/74				
	ACTUAL TOTAL EXPENSE	ACTUAL INCREASE FROM I.O.C.*	ACTUAL INCREASE FROM PRIOR YEAR	% INCREASE FROM I.O.C. *	% INCREASE FROM PRIOR YEAR	ACTUAL TOTAL EXPENSE	ACTUAL INCREASE FROM I.O.C. *	ACTUAL INCREASE FROM PRIOR YEAR	% INCREASE FROM I.O.C.*	% INCREASE FROM PRIOR YEAR
UTILITY-ELECTRIC	7,359 *					7,990	631	631	8.57	8.57
UTILITY-WATER	1,941 *					2,137	196	196	10.09	10.09
UTILITY-GAS	2,558 *	N/A	N/A	N/A	N/A	2,815	257	257	10.05	10.05
PROPERTY TAX	15,592 *					17,933	2,341	2,341	15.01	15.01
TOTAL PROP + UTIL'S COST	27,450 *					30,935	3,485	3,485	12.70	12.70
TOTAL MANAGEMENT BUDGET	65,371					71,950	6,579	6,579	10.06	10.06

* ONLY TOTAL MANAGEMENT BUDGET STATED BY M.U.D.; ITEMIZED COSTS ARE ESTIMATES DERIVED FROM A RATIO OF THE INITIAL MANAGEMENT BUDGET AND THE 1973-74 MANAGEMENT BUDGET (90.85%)

	3/1/74 - 2/28/75					"ALLOWED" (ESTIMATES) 1975-76				
	ACTUAL TOTAL EARNINGS	ACTUAL INCREASE FROM T.O.C.K	ACTUAL INCREASE FROM PRIOR YEAR	% INCREASE FROM I.O.C	% INCREASE FROM PRIOR YEAR	ACTUAL TOTAL EARNINGS	ACTUAL INCREASE FROM I.O.C.*	ACTUAL INCREASE FROM PRIOR YEAR	% INCREASE FROM I.O.C	% INCREASE FROM PRIOR YEAR
UTILITY - ELECTRIC	9,901	1,542	911	20.85	11.40	10,680	3,321	1,779	45.13	
UTILITY - WATER	2,506	565	369	29.11	17.27	2,740	819	234	42.19	
UTILITY - GAS	2,035	477	220	18.65	7.88	3,640	1,082	605	42.20	
PROPERTY TAX	26,724	11,132	8,791	71.40	49.02	27,220	11,628	496	74.58	
TOTAL PROP. + UTIL COST	41,166	13,716	10,291	49.97	33.27	44,800	** 14,850	3,134	61.58	
TOTAL MANGAT BUDGET	84,305	20,934	14,355	32.02	19.95	79,770	14,399	** (6,535)	22.03	

** ACTUAL COST OF RISE IN UTILITIES AND PROPERTY TAX SINCE INITIAL OPERATING COST IS $16,850,
$16,850, DIVIDED BY 99 UNITS DIVIDED BY 12 MONTHS YIELDS A RISE OF $14.16 PER MONTH PER UNIT OR THE ACTUAL INCREASE IN PROPERTY TAXES AND UTILITIES SINCE INITIAL OCCUPANCY

EXHIBIT Y - P. 2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RENTAL COMPUTATION FORM

NUMBER OF UNITS	9	PROJECT NUMBER	122-4 "537-LDP
NUMBER OF ROOMS		NAME OF OWNER	Meyler Park Apartments LDP
NUMBER OF GARAGES	0	PROJECT NAME	Meyler Park Apartments
NUMBER OF STORES	0	LOCATION	863 11th. Street, San Bernardino, Calif.

SECTION I. VERIFICATION OF EQUIPMENT AND SERVICES INCLUDED IN RENT

(Check applicable items in each column)

ITEM	A. PREV. APPROVAL	B. EXISTING	C. APPROVED	ITEM	A. PREV. APPROVAL	B. EXISTING	C. APPROV.
Ranges (Gas or Electricity)	X	X	X	Electricity to Tenant	X	X	X
Refrigerators (Gas or Electricity)	X	X	X	Decorating			
Laundry Facilities	X	X	X	Furniture			
Water (Hot or Cold)	X	X	X	Other (Specify) Drapes Height	X	X	X
Space Heat	X	X	X	Air Conditioning	X	X	X
Gas to Tenant	X	X	X	Kitchen Fan	X	X	X

SECTION II. COMPARISON AND ALLOWANCE OF EXPENSES

EXPENSE ITEM	A. FORM 2264 Dated 12-20 19 72 AMOUNT	B. USED FOR LAST RENT INCREASE Dated ____ 19__ AMOUNT	C. MORTGAGOR'S STATEMENT Dated 2-28 19 74 AMOUNT	D. ALLOWED Dated 5-3 19 74 AMOUNT	E. REMARKS
1. Advertising			1006	1010	Figures rounded
2 Commissions			20		
3 Management 7%			8685		
4 Resident Manager			1264		
5 Clerical					
6 Telephone and Telegraph			502		
7. Office Expense			1720		
8 Legal and Audit			33	40	Actual
9 Elevator Power					
10. Elevator Maintenance			2147	2150	Actual
11. Heating and Ventilating			114	120	"
12 Janitorial Expense (Materials)			139	140	"
13 Lighting (Misc. Power)			7990	11990	Actual plus 20%
14 Water			2137	2140	Actual
15 Gas			2815	3380	Actual plus 20%
16 Garbage and Rubbish Removal			672	670	Actual
17 Payroll			1390	1390	"
18 Decorating			1391	1390	"
19 Repairs			5557	5560	"
20 Exterminating			214	220	"
21 Insurance			1471	1470	Actual
22 Ground Expense (Materials Only)			8414	8450	Actual
23 Furniture and Furnishings					
24. Misc			1135	1140	Actual
25					
26 TOTAL OPERATING EXPENSES	59 700		48896	41220	
27 Reserve for Replacements	5665		4249	5670	For Imp. Assessment
28 Real Estate Taxes			17935	24730	For FULL
29 Insurance			695	700	Actual
30 Misc			177	180	Be Exact
31				1200	Figures Rounded
32 Net				34	

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RENTAL COMPUTATION FORM

NUMBER OF UNITS 99	PROJECT NUMBER 122-44537-C ?
NUMBER OF ROOMS 347 1/2	NAME OF OWNER C-K
NUMBER OF GARAGES	PROJECT NAME MESLER PARK APTS
NUMBER OF STORES	LOCATION 960 W 5TH SAN PEDRO CALIF

SECTION I. VERIFICATION OF EQUIPMENT AND SERVICES INCLUDED IN RENT

(Check applicable items in each column)

ITEM	A. PREV APPROVAL	B. EXISTING	C. APPROVED	ITEM	A. PREV APPROVAL	B. EXISTING	C. APPROVED
Ranges (Gas or Electricity)	✓			Electricity to Tenant	✓		
Refrigerators (Gas or Electricity)	✓			Decorating			
Laundry Facilities	✓			Furniture			
Water (Hot or Cold)	✓			Other (Specify)			
Space Heat	✓			KITCHEN FAN D&C	✓		
Gas to Tenant	✓						

SECTION II. COMPARISON AND ALLOWANCE OF EXPENSES

EXPENSE ITEM	A. FORM 2264 Dated ____ 19__ AMOUNT	B. USED FOR LAST RENT INCREASE Dated 9-6 19 24 AMOUNT	C. MORTGAGOR'S STATEMENT Dated ____ 19__ AMOUNT	D. ALLOWED Dated ____ 19__ AMOUNT	E. REMARKS
1. Advertising		1010	1148	520	TYPICAL
2. Painting - Misc Commissions RENT			781		
3. Management			8944		
4. Resident Manager		12,220	1307	1400	ACTUAL
5. Clerical			1148		
6. Telephone and Telegraph			455	460	"
7. Office Expense			709		
8. Legal and Audit		40	2380	1280	"
9. Elevator Power		2156			
10. Elevator Maintenance			1303	1300	"
11. Heating and Ventilating (Maint)		120	1286	1370	"
12. Janitorial Expense (Materials)		140	1530		
13. Lighting (Main Power)		11 990	8901	10,680	" +20%
14. Water		2140	2506	2760	" +10
15. Gas		3380	3035	3640	" +20
16. Garbage and Rubbish Removal		620	729	730	"
17. Payroll		1390	1530	1530	"
18. Decorating		1390	1530	1530	"
19. Repairs		5560	5953.23	5960	"
20. Extermination		220	216	220	"
21. Insurance		1470	1096	1100	"
22. Grounds Expense (Materials Only)		8450	7869	7270	"
23. Furniture and Furnishings					
24. MISC		1040	63		
25. PAINTING (Ext)				3600	"
26. TOTAL OPERATING EXPENSES		51,3480	51,954	49,50.00	
27. Reserve for Replacements	5665	5670	5665	5670	"
28. Real Estate Taxes		24730	24,724	27320	"
29. Social Security Taxes		700	748	750	"
30. [illegible]		120	120	120	"
31.		24730			

WILLIAM D. KELLER
United States Attorney

FREDERICK M. BROSIO, JR.
Assistant U. S. Attorney
Chief, Civil Division

STEPHEN D. PETERSEN
Assistant U. S. Attorney
1100 U. S. Court House
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Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed Nov. 19, 1975]

No. CV 75-3009-JWC

HILDA ABRAMS, GRETA JAEGER, MARGARET MCEACHIN, Individually and as representatives of a class,
PLAINTIFFS,

v.

CARLA HILLS, as Secretary of the United States Department of Housing and Urban Development, H. R. CRAWFORD, as Assistant Secretary for Housing Management of the United States Department of Housing and Urban Development, ROLAND CANFIELD, as Director of the Los Angeles Area Office of the United States Department of Housing and Urban Development, and G & K MANAGEMENT CO., INC., and MEYLER PARK APARTMENTS, a Limited Partnership, DEFENDANTS.

STIPULATION OF FACTS WITH RESERVATIONS

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiffs; G & K Management Co., Inc.,

and Meyler Park Apartments, private defendants; and Carla Hills, H. R. Crawford and Roland Canfield, federal defendants, by their respective counsel, that, for the purpose of trial or other hearings in the above-entitled cause, the facts hereinafter stated are undisputed, except as herein noted, and may be treated by the Court as facts proved in open court.

The parties may, on the trial of said cause, call witnesses and offer evidence for the purpose of proving such additional facts as the parties may see fit.

1. The plaintiffs Hilda Abrams, Greta Jaeger, and Margaret McEachin, hereinafter, "plaintiffs," are residents of the Meyler Park Apartments, each of whom pay more than twenty-five to thirty percent (25-30%) of their "adjusted family incomes" in rent.

N.B. The federal defendants do not join in Stipulation No. 1 as to plaintiffs Jaeger & McEachin for the reason that according to HUD's available records those plaintiffs pay approximately 25% of their "adjusted family incomes" in rent. The non-federal parties are submitting certain information to HUD in the hope that the Federal Defendants will join in Stipulation No. 1 fully and the Court will be advised.

2. The class which plaintiffs represent are residents of the Meyler Park Apartments, each of whom pay more than twenty-five to thirty percent (25-30%) of their "adjusted family incomes" in rent.

N.B. The federal defendants do not join in Stipulation No. 2 because of their belief that it states a conclusion of law.

3. "Adjusted family income" is determined by the federal defendants Carla Hills, H. R. Crawford, and Roland Canfield according to 24 C.F.R. 236.2 to be monthly gross income, including total income before taxes and other deductions, less five percent of monthly gross income and other deductions not listed herein.

4. Defendants Carla Hills, H. R. Crawford, and Roland Canfield, hereinafter "federal defendants," are officials of the United States Department of Housing and Urban Development, hereinafter, "HUD" and defendant Hills is responsible for the administration and enforcement of all

laws, regulations, powers, and duties relating to that Department, and particularly for the administration of Section 236 of the National Housing Act, 12 U.S.C. § 1715z-1, *et seq.*

5. Defendants Meyler Park Apartments, a Limited Partnership, and G & K Management Company, Inc., hereinafter, "private defendants," are respectively, the owners and operators of the Meyler Park Apartments, a 99-unit Section 236 development in San Pedro, California.

6. The Housing and Urban Development Act of 1968 amended the National Housing Act by adding *inter alia* the Section 236 Program (12 U.S.C. § 1715z-1) which has as its stated purpose the reduction of rentals for lower income families.

7. The federal defendants are responsible for implementation of the Section 236 Program, including issuing rules and regulations pursuant thereto, making periodic interest payments on behalf of qualified mortgagors, and regulating project owners with respect to rent, rent increase procedures, and other operating procedures.

8. The National Housing Act was further amended by the Housing and Community Development Act of 1974, hereinafter, "HCDA, 1974," on August 22, 1974, adding Section 212(2)(3) and (3), hereinafter, "operating subsidy provisions," 12 U.S.C. § 1715z-1(f)(3) and (g).

9. The reserve fund referred to in Section 212(3) of HCDA, 1974; 12 U.S.C. § 1715z-1(g) was valued as of August 31, 1975 at thirty-eight million, three hundred ninety-three thousand, seven hundred twenty dollars ($38,393,720).

10. The reserve fund referred to in Section 212(3) 12 U.S.C. § 1715z-1(g) is available to the federal defendants for use as an operating subsidy.

N.B. The federal defendants do not join in Stipulation No. 10 because of their belief that it states a conclusion of law and incorrectly assumes that a Secretarial determination has been made pursuant to the statute.

11. The private defendants make monthly payments from all rentals collected from the residents at Meyler Park Apartments in excess of basic rent to the Secretary for crediting to the reserve fund. For the month ending

September, 1975, the private defendants paid $131.00 to the Secretary for such crediting.

N.B. While the federal defendants join in Stipulation No. 11 as to its factual content, it is, in their view, not material to the issues before the Court.

12. The estimated amount of the operating subsidy for September, 1975, for Meyler Park Apartment is $453.12.

N.B. The federal defendants do not join in Stipulation No. 12 because of their belief that is states a conclusion of law, incorrectly assumes that Secretarial determinations have been made pursuant to the statute, and it is therefore incorrect as a matter of fact, and finally, is not material to the matters before the Court.

13. The Meyler Park Apartments is a 99-unit lower-income housing complex in San Pedro, California, constructed and financed pursuant to Section 236, 12 U.S.C. § 1715z-1.

14. Tenants residing in projects qualified for Section 236 assistance, as the Meyler Park Apartments, pay twenty-five percent (25%) of their "adjusted family incomes" or "basic rent," whichever is greater, not to exceed "fair market rental".

15. Application for rent increases are submitted to HUD by owners of projects insured and mortgaged pursuant to Section 236, 12 U.S.C. § 1715z-1, and may be approved if they provide reasonable charges to tenants and a fair return to the mortgagor. Such increases must be for demonstrated and bonafide increases in operating expenses and taxes.

16. Plaintiffs began their occupancy at the Meyler Park Apartments in 1972 and 1973, paying rent at the initial rate of $105.32 per month. Their leases were first amended effective November 1, 1974, to increase the rent ten and eight-tenths percent (10.8%) to $116.00 per month. Said rent raise was attributed at least in part to increased utility costs and property taxes.

17. On or about May 29, 1975, private defendants notified plaintiffs of their intention to apply to HUD for approval of a second rent increase, attributing said increase, at least in part, to a "dramatic increase" in utility costs and an increase in property taxes.

18. On or about July 3, 1975, private defendants submitted to federal defendants the request for a rent increase, which was approved by the federal defendants because of the increased costs for all utilities, property taxes, and other operating costs.

N.B. The federal defendants do not join in Stipulation No. 18, however the federal defendants do agree that on or about July 3, 1975, the private defendants submitted to federal defendants the request for a rent increase, which was approved by the federal defendants because of increased costs, including in part increased costs in real estate taxes.

19. On or about July 28, 1975, plaintiffs were notified that the rent increase had been approved by the federal defendants and that effective September 1, 1975, their rent would be increased to $128.00 per month, a raise of ten and four-tenths percent (10.4%).

20. Plaintiffs requested private defendants to apply for additional assistance payments from the operating subsidy, and requested federal defendants to provide additional assistance payments under the operating subsidy program.

21. There have been increases in property taxes and utilities at Meyler Park Apartments since the date that the apartment complex may be determined to be fully occupied which have increased plaintiffs' rents by at least, if not more than, $12.00 per month, the amount of the present rent increase.

N.B. The federal defendants do not join in Stipulation No. 21, however the federal defendants do agree that during the relevant period of time there have been increases in plaintiffs' rent due in part to increases in property taxes and utility expenses at Meyler Park Apartments.

22. Federal defendants have not established an initial operating expense level for the Meyler Park Apartments, neither by February 18, 1975, nor until the present.

23. The federal defendants have not issued rules and regulations implementing the operating subsidy provision, nor have they accepted applications for additional assistance payments.

24. Federal defendants have not made additional assistance payments to private defendants.

25. As a result of the implementation of Transmittal Notice 24 which amends the Insured Project Servicing Handbook, 4350.1 (plaintiffs' Exhibit "W") the rate at which the reserve fund accrues has been affected.

N.B. The federal defendants do not join in Stipulation No. 25 for the reason that it states a conclusion of law. In federal defendants' view, Transmittal Notice 24 merely alters the definition of excess rental incomes.

26. The parties hereby agree that the following documents are in fact what they are purported to be and that no further foundational proof need be shown.

a. Plaintiffs' Exhibit "E".
b. Plaintiffs' Exhibit "F".
c. Plaintiffs' Exhibit "G".
d. Plaintiffs' Exhibit "J".
e. Plaintiffs' Exhibit "W".

27. Attached hereto is a copy of the most recent revision of Chapter 4, Section 3 of the HUD Insured Project Servicing Handbook, 4350.1 (a copy of an earlier revision is attached to plaintiffs' Complaint as Plaintiffs' Exhibit "G").

DATED: This 18th day of November, 1975.

WILLIAM D. KELLER
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant U. S. Attorney
Chief, Civil Division

/s/ Stephen B. Petersen
STEPHEN B. PETERSEN
Assistant U. S. Attorney

Attorneys for Federal Defendants.

DATED: This 18th day of November, 1975.

/s/ Catherine M. Bishop
RONALD S. JAVOR
CATHERINE BISHOP
Attorneys for Plaintiff.

DATED: This 18th day of November, 1975.

AXELRAD, SEVILLA & ROSS

/s/ John G. Kerr
JOHN G. KERR
Attorneys for Private Defendants,
Meyler Park Apartments, G & K
Management, Co., Inc.

ATTACHMENT 1

INSURED PROJECT
SERVICING HANDBOOK

4350.1

CHAPTER 4, SECTION 3

CHAPTER 4. GENERAL MORTGAGE SERVICING

SECTION 3. RENTS AND CARRYING CHARGES

1. INTRODUCTION. Prompt action by the Area Office Loan Management and Property Disposition Branch Director or the Insuring Office Management and Mortgage Servicing Section Chief to review rent schedules is of utmost importance since adequate income and prudent use of it are essential to the success of any project. The appropriate Area or Insuring Office loan management personnel must approve or disapprove all requests for rental rate increases within 30 days from the day received in the Office. If an Office is unable to meet this deadline, it shall prepare a memorandum, within the 30-day period, discussing the Office's inability to meet this deadline and explaining the reasons for the delay. This memorandum, signed by the Area or Insuring Office Director, shall be sent through the appropriate Regional Administrator to the Assistant Secretary for Housing Management, Attention: Director, Office of Loan Management.

2. COMMERCIAL RENTS.

   a. *Before initial occupancy*, the rents for all commercial space will be approved by HUD, but such rates shall constitute a floor rather than a ceiling. The objective is to determine that the rents proposed for such space are sufficiently in accord with those anticipated in processing to represent an economically sound rent. Thereafter, it is incumbent on HUD to see that economically sound rents are maintained.

b. *Should there be business reasons* which indicate the probable necessity for reducing commercial rents below the levels established in initial processing, a statement of facts and circumstances to justify a specific reduction shall be filed by the mortgagor with the Housing Management Division Director.

3. SHELTER RENTS. With the approval of HUD, a schedule of shelter rents must be established initially and maintained thereafter at levels that will provide reasonable charges to tenants and a fair return to the mortgagor. As a general rule, the objective in examining and approving a request for an increase in rent is to compensate for demonstrated increases in operating expenses and taxes and thus afford the prospect of a rate of return to the owner not in excess of the rate initially allowed. In the case of nonprofit mortgagors, a balanced budget rather than a net return is, of course, the primary consideration.

a. *Request for Rent Increase.*

(1) *A request for rent increase* should normally be accompanied by a current financial statement, but there are exceptions. (For example, an increase in an approved rental schedule that was originally less than the Area of Insuring Office could have approved at the date of initial occupancy requires only a request from the mortgagor setting forth that fact. In such instances, a new schedule may be approved without recalculation, provided such schedule does not exceed the maximum which could have been approved at initial occupancy.) Another exception would be where a rent adjustment was solely because the actual levying of real estate taxes or assessments was considerably in excess of the estimates used. In every such instance, the amount of the real estate taxes actually assessed against the property will be verified before a new rent schedule is approved.

(2) *Requests for rent increases* which would result in total rents in *excess of allowable rents* must be supported by a complete submission by the mortgagor, and will be subjected to careful examination. Such submissions should include:

(a) A formal written statement citing the basis for the request and including justification for any unusual items of expense as well as any unusual increases in regular expense items.

(b) A statement relating to the general condition of the property; the frequency of redecorating dwelling units; and itemization of existing equipment and services included in rents; existing and proposed apartment gross potential income (also stated in terms of average amounts per room per month); existing and proposed garage rents for commercial space, if any.

(c) A current financial statement covering a period of at least one year is desirable. However, when a mortgagor can foresee an annual deficit before the end of the accounting year, a rent increase can be considered based on monthly accounts which document the need for such an increase. (See chapter 5, sec. 1, par. 9(c).)

b. *Considerations Requisite to Examination.* No rent increase should be approved without consideration being given to the following:

(1) Any finding as to improper maintenance or serious violation under the Regulatory Agreement. If the property is not being properly maintained, there should be an undertaking on the part of the owner to meet minimum standards prescribed by HUD before final action is taken on the request for a rent increase.

(2) Similarly, an agreement must be reached between HUD and the owner with respect to any

finding of a violation under the mortgage or Regulatory Agreement before final action is taken on a request for a rent increase.

(3) Another important consideration could be the clearance of outstanding obligations not disclosed at the time of final closing.

c. *Examining Requests for Rent Increases.*

(1) *Approval or disapproval of requests* for rent increases is a responsibility of the Area or Insuring Office, except for Armed Services Housing. All requests shall be processed within 30 days from receipt as outlined in paragraph 1, Mortgagors shall be promptly notified in writing of approval or disapproval of their requests and, in the event of disapproval, the letter will cite the reasons for such disapproval.

(2) *Examination of requests for rent increases* follows an established pattern in most cases with certain deviations necessary when considering Section 221(d)(3), below-market interest rate projects, Housing for the Elderly projects, and projects covered by Secretary-Held (HUD-Held) mortgages. Procedures applicable to the latter are outlined in Handbook 4360.1. In most cases the primary concern is to approve a schedule with rates that are reasonable.

(3) *In determining maximum permissible rents,* Form HUD-92547, Rental Computation, will be used. Before proceeding with the actual computation, the request and supporting data submitted by the mortgagor should be examined for sufficiency. Where two or more continuous projects of the same characteristics are under the same ownership, computation for a rental increase may be consolidated on one Form HUD-92547. The word "mortgagor" mentioned in the instructions may be construed to mean "mortgagors," but variations

between the projects may require certain adjustments. In the event one project includes commercial space while the other does not, calculations of the operating expenses and total replacement cost must be made for the commercial space and deducted from the consolidated figures.

(a *Verification of Equipment and Services Included in the Rent.* Upon receipt of a request from a mortgagor, accompanied by required submissions, the equipment and services included in the rent will be compared with those contemplated at the time of original processing or at the time of the last rent increase. Any discrepancy will be reconciled or explained to the satisfaction of the Area or Insuring Office. There should be no objection to improving or increasing the equipment and services included in the rent, but any attempt to improve service standards for the purpose of obtaining disproportionate increase in rents must be discouraged. Conversely, any evidence of maintenance standards having been lowered should be reflected in the amounts allowed.

(b) *Comparison and Allowance of Expenses.*

1. Except for those cases where a rental schedule was approved for rents below maximum permissible rates, the only justification for a rent increase is a bona fide increase in operating expenses or real estate taxes. The allowable increases should be compared with expenses allowed when the most recent rent increase was computed, or with Form No. 2264 when there has been no previous rent increase.

2. All items of expense should be entered in the spaces provided under Section II of Form HUD-92547. Column A should identify by date the particular Form No. 2264 used in the final determination of the amount of the insured mortgage, and should set forth the identical expense data used in determining the original.

EXHIBIT "J"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HILDA ABRAMS, GRETA JAEGER, MARGARET MCEACHIN, individually and as representatives of a class
PLAINTIFFS

v.

CARLA HILLS, H. R. CRAWFORD, ROLAND CANFIELD (U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT), G&K MANAGEMENT, CO., MEYLER PARK APARTMENTS, LTD., DEFENDANTS

Civil Action No. 75-3009

AFFIDAVIT OF ALBERT J. KLIMAN

Albert J. Kliman, being duly sworn, deposes and says:

1. I am the Director of the Office of Budget of the Department of Housing and Urban Development. In that capacity I serve as the adviser to and representative of the Assistant Secretary for Administration in matters relating to budget formulation and execution, and as adviser to the Secretary and Under Secretary with respect to these matters. I am responsible for the development of budget plans, policies and procedures, and for the overall supervision of the Office of Budget. The principal responsibilities of the Office of Budget are:

(a) To advise the Assistant Secretary for Administration and other high level officials of the Department including the Secretary and Under Secretary on budget matters, including the budgetary implications of policy and legislative proposals;

(b) To advise Assistant Secretaries and staff officers on their budgetary responsibilities, to evaluate the effectiveness of these activities and to exercise technical and functional supervision with

respect to all budget activities throughout the Department; and

(c) To prepare or review all consolidated or Department-wide budget estimates for submission to Office of Management and Budget and the Congress.

2. It is the purpose of this affidavit to state the manner in which the Congres has made available contract authority and appropriated funds to carry out the provisions of Section 236 of the National Housing Act as amended. It is also the purpose of this affidavit to state how the Department has programmed the unreserved balance of contract authority made available by Congress to carry out the Section 236 program.

3. "Contract authority," as used in this affidavit, refers to the means by which contracts are entered into under statutory authority which provides for a commitment of Federal fund payments, now and in the future, up to a stipulated limit, prior to an appropriation of funds for the liquidation of such contracts. With respect to the Section 236 program, contract authority permits the Department to enter into contracts to make annual payments, such as interest reduction payments, which are authorized by Section 236 of the National Housing Act, as amended, for certain future periods. Congress makes contract authority available under the Section 236 program through a two step process. First, there must be an authorization of contract authority contained in the substantive legislation. Second, the contract authorization, or portion thereof, must be released to the Department in an appropriations act. The Department may then enter into contracts to make annual payments authorized by Section 236 up to the limit established in the appropriations act releasing such contract authority.

4. "Appropriation," as used in this affidavit, refers to an authorization in an appropriations act to draw funds from the Treasury for specified purposes and to make disbursements of these funds. With respect to the Section 236 program, appropriations provide the Department with funds to liquidate contracts for payments au-

thorized by Section 236 of the National Housing Act, as amended, which were entered into pursuant to contract authority released by Congress for that purpose.

5. Congress has released no contract authority specifically for contracts for the payment of operating subsidies authorized by Section 236(f)(3) and (g) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974. Section 236(i) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974, authorized $75,000,000 of contract authority, subject to release in appropriations acts, to carry out the provisions of Section 236 of the National Housing Act, as amended, in Fiscal Year 1975. However, the Congress has released no contract authority in an appropriations Act pursuant to this authorization.

6. Although Congress has released no new contract authority for the Section 236 program, it has authorized the Department to use the contract authority it currently has available to carry out the provisions of Section 236 of the National Housing Act, as amended, to enter into contracts for the payment of Section 236 operating subsidies. See: Senate Report No. 93-1255, accompanying H.R. 16900, 93d Cong., 2d Sess., October 9, 1974, and H. Rpt. No. 93-1503, accompanying H.R. 16900, 93d Cong., 2d Sess., November 26, 1974.

7. As of July 31, 1975, the Department had an unreserved balance of contract authority in an amount aggregating $120,151,891 for contracts authorized by Section 236 of the National Housing Act, as amended. The distribution of the unreserved balance is currently under review in connection with the preparation of the Fiscal Year 1977 Budget. No specific distribution has been made. However, the Department has about $65 million of this contract authority set aside for bona-fide commitments. The balance is expected to be committed by the Department for (1) amendments to contracts for the payment of interest reduction payments on State-aided projects as authorized by Section 236(h) of the National Housing Act, as amended; and (2) "deep subsidies" mandated by Section 236(f)(2) of the National Housing Act,

as amended by Section 212 of the Housing and Community Development Act of 1974.

8. Section 236(g) of the National Housing Act, as amended by Section 212 of the Housing and Community Development Act of 1974, provides that Section 236 project owners shall periodically pay to the Secretary all rental charges collected in excess of basic rental charges and that these excess rental charges shall be placed in a reserve fund by the Secretary. This section goes on to state that the Secretary may use the excess rental charges in the reserve fund to make operating subsidy payments to project owners by crediting the reserve funds to the appropriation authorized by Section 236(i), as amended. Section 236(i), as amended, in addition to authorizing appropriations to carry out the Section 236 program, provides that the Secretary has no more contract authority than that granted by appropriations acts. Therefore, the Department can use the $37,823,293 balance in the reserve fund, as of August 31, 1975, for the payment of operating subsidies *only* to the extent that there exists sufficient unreserved contract authority released by Congress for that purpose. However, as is indicated in paragraph 7, the Department plans to commit its entire unreserved balance of contract authority for purposes other than contracts for the payment of operating subsidies.

/s/ Albert J. Kliman
ALBERT J. KLIMAN
Director, Office of Budget

Subscribed and sworn to before me on this 8th day of October, 1975.

/s/ BERNARD E. BANKS
Notary Public
My Commission Expires
June 30, 1976

EXHIBIT "K"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. 75-3009

HILDA ABRAMS, GRETA JAEGER, MARGARET MCEACHIN, individually and as representatives of a class
PLAINTIFFS

v.

CARLA HILLS, H. R. CRAWFORD, ROLAND CANFIELD (U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT), G&K MANAGEMENT, CO., MEYLER PARK APARTMENTS, LTD., DEFENDANTS

AFFIDAVIT OF H. R. CRAWFORD

H. R. Crawford, being duly sworn, deposes and says:

1. I am the Assistant Secretary for Housing Management of the Department of Housing and Urban Development (HUD), and as such, I have responsibility pursuant to a delegation of authority from the Secretary published at 36 F.R. 5005, as amended, for all housing management functions of HUD, including all management activities under the National Housing Act, as amended.

2. The Department is extremely concerned with the problems threatening the economic viability of HUD insured and subsidized multifamily housing projects as well as the financial burdens imposed upon the low- and moderate-income tenants of these projects who must pay higher rents to meet the continuing rise in operating costs. Sharp rises in property taxes, utility rates and the cost of other goods and services essential to the operation of multifamily housing projects have brought about an alarming acceleration in the rate of defaults in mortgage payments by the owners of such projects. It is the position of the Department that a broad strategy, which will

address itself to the problems of all HUD assisted multifamily projects, is necessary to alleviate what has become a financial crisis.

3. The operating subsidy provisions of Section 212 of the Housing and Community Development Act of 1974 is an attempt by the Congress to address the problem of increased operating costs in Section 236 projects by providing additional subsidies to the project owner. However, Section 212 does not authorize additional assistance for HUD assisted multifamily projects insured under other sections of the National Housing Act which face identical problems.

4. Section 212 of the Housing and Community Development Act of 1974 authorizes the payment of operating subsidies to Section 236 project owners only to the extent necessary to maintain the basic rental charges for tenants at levels not in excess of 30 percent of their gross income. Therefore, the benefit of operating subsidies flows only to those Section 236 projects which are occupied by tenants whose basic rental charge exceeds 30 percent of their gross income. There are Section 236 projects in which a majority or all of the tenants occupying its units pay a rental charge which does not exceed 30 percent of their gross income. Consequently, the payment of operating subsidies will have little or no ameliorating effect upon the economic difficulties threatening the owners of a number of Section 236 projects.

5. The payment of operating subsidies solely to Section 236 project owners, therefore, is inequitable in providing relief only to a small proportion of HUD assisted multifamily projects and to an even smaller group of beneficiaries—those owners of Section 236 projects whose tenants have a basic rental charge exceeding 30 percent of gross income. In view of the need for a general multifamily default policy which will address itself to the economic difficulties facing owners and tenants of all HUD assisted multifamily projects, the Department is currently considering a number of alternative proposals for solutions that are more comprehensive and more equitable.

6. There are two basic approaches to affect the cash flow problems facing multifamily projects without raising

the rental charges that the tenants must pay. The first is to provide additional subsidies for the projects to increase operating income. This approach does not affect the amount of the mortgagor's debt service payments. The other option is to decrease the debt service on the mortgage thereby freeing additional income for the operation of the project. There are a number of alternative methods to achieve the goals of each of these options. Some of the alternatives currently being considered by the Department are as follows:

(a) A policy whereby mortgages are assigned to HUD and then recast to require a payment of principal and interest based upon current and foreseeable project income. The balance of the principal would not become due until the expiration date of the original indebtedness;

(b) A policy whereby Section 8 units, authorized by the Housing and Community Development Act of 1974, would be allocated to distressed multifamily projects, thereby providing a base of rental income for the project which would rise with inflationary cost increases as they are sustained, and not affect the rent the tenants must pay;

(c) A policy which permits Section 236 project owners to offset rents collected in excess of the basic rental charge against uncollected rents as a cushion against increased operating costs. Consideration is also being given to making this procedure retroactive for the excess rental collections which have been remitted to HUD pursuant to Section 236(g) of the National Housing Act, as amended;

(d) A policy permitting extensions in the maturity date of the mortgage, thereby decreasing the project's debt service payments;

(e) A policy which permits the transfer of nonprofit projects to limited distribution ownership to improve management, i.e., management which is motivated by existing benefits available to owners of subsidized projects;

(f) A policy which authorizes an increase in the tenant income limits for subsidized projects which, coupled with the increased use of rent supplements, would provide an increase in rental income while at the same time cushioning the impact of increased operating costs on lower income tenants; and

(g) A legislative proposal to permit payment of a partial insurance claim (out of the insurance fund established by Section 238 of the National Housing Act, as amended) to the project owner which would reduce his mortgage indebtedness to a monthly amortization which he can afford to pay out of current income. A second note mortgage for the amount of the insurance claim paid would be held by HUD and be repayable under terms consisting of favorable interest rates and a deferred start of amortization.

7. *A Multifamily Defaults Study* was undertaken within the Department at the request of former HUD Secretary James T. Lynn. This study probed many of the alternatives currently being considered by the Department to alleviate the default problem in HUD assisted multifamily projects and evaluated the potential effectiveness of each alternative proposal. In addition, the Department helped launch a $700,000 research and demonstration effort to gain new insight and answers to problems besetting some 60 financially troubled multifamily housing projects in the New York City area. These projects contain 16,500 dwelling units and represent mortgages totaling almost $370 million.

8. Earlier in the year, the Department announced a temporary suspension of further referrals to the Department of Justice of additional foreclosures of HUD subsidized multifamily projects owned by nonprofit and limited dividend mortgagors, except in the case of abandonment or similar circumstances. In an effort to obtain the views of all interested public and private sources concerning HUD's policies on defaults in all HUD subsidized multifamily projects and the impact of defaults upon

the low- and moderate-income tenants residing in such projects, the Department held public hearings on May 5 and 6, 1975. These hearings were designed to solicit the proposals of tenant groups, project owners and other representatives of the community at large on alleviating the default problem so that these proposals can be added to those currently being considered by the Department.

9. While the Department is engaged in examining the potential effectiveness of alternative proposals designed to alleviate the financial difficulties of all HUD insured and subsidized multifamily projects and the adverse impact of these difficulties upon the tenants of such projects, it has no plans to implement the provisions of Section 236(f)(3) and (g) of the National Housing Act, as amended, which authorize the payment of operating subsidies to Section 236 project owners. It is the position of the Department that the alternative proposals currently being considered provide a broader approach to the economic difficulties threatening multifamily project owners as well as the tenants of such projects.

10. Secretary Hills, Under Secretary Mitchell and I appeared before the Senate Committee on Appropriations on April 21 and 22, 1975. At these hearings, the intent of the Department not to implement the statutory authority to pay operating subsidies to Section 236 project owners, at this time, was made clear to the committee. The committee was concerned with options being considered by the Department to alleviate the multifamily default problem as well as the financial difficulties threatening the tenants of these projects. The Secretary, the Under Secretary and I discussed some of the alternatives being considered by the Department as well as some of the methods proposed for their implementation. I also appeared before the Subcommittee on HUD and Other Independent Agencies of the House Committee on Appropriations at hearings held on April 14 through 18, 1975. At these hearings, the Subcommittee was informed of the Department's intent with respect to the implementation of the statutory authority to pay operating subsidies under the Section 236 program. Departmental spokesmen will continue to keep those committees fully informed concern-

ing the progress made in the development of alternative solutions and the possible need for legislation in this area.

11. On July 29, 1975, the Department published an Interim Rule at 40 F.R. 31873, implementing the new Section 236(f)(2) of the National Housing Act. This regulation will provide additional rental assistance payments to a Section 236 project for tenants who cannot afford to pay the basic rental charge with 25 percent of their income. Rental assistance payments to eligible projects will normally be made available to 20 percent of the dwelling units. This Interim Rule was effective upon publication and the Department has provided a 60 day period for interested persons to file comment before adopting a final rule.

12. Pursuant to the request of the Secretary, I estimated the minimum amount of funds necessary to make operating subsidy payments to all Section 236 projects under management in Fiscal Year 1976, which commences July 1, 1975. Based upon calculations made by members of my staff, I estimated that it would cost approximately $4.3 million per month or $51.4 million per year to implement the operating subsidy program for all Section 236 projects under management in Fiscal Year 1976. The balance in the reserve fund established by Section 236(g), as amended, was $37,823,293 as of August 31, 1975.

13. Section 236(g) of the National Housing Act, as amended, provides that during any period that the Secretary determines that the balance in the reserve fund, established by Section 236(b), is adequate to meet the estimated operating subsidy payments, as authorized by Section 236(f)(3), the amount in the reserve fund shall be credited to the appropriation authorized by Section 236(i) and be available until the end of the next fiscal year (FY 1976) for the purpose of making operating subsidy payments. The Secretary has not determined that the balance in the reserve fund is sufficient to meet the

estimated operating subsidy payments for the more than 3,650 Section 236 projects under management.

/s/ H. R. Crawford
H. R. CRAWFORD
Assistant Secretary
for Housing Management

Subscribed and sworn to before me on this 8th day of October, 1975.

/s/ Bernard E. Banks
Notary Public
My Commission Expires

June 30, 1976

EXHIBIT "N"

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. 75-3009

HILDA ABRAMS, ET AL., PLAINTIFFS,

v.

CARLA HILLS, ET AL., DEFENDANTS.

AFFIDAVIT OF ABNER SILVERMAN

Abner Silverman, being duly sworn, deposes and says:

1. I am the Counselor to the Assistant Secretary for Housing Management of the Department of Housing and Urban Development (HUD). In the absence of the Assistant Secretary, and the Deputy Assistant Secretary, for Housing Management I assume the position of Acting Assistant Secretary for Housing Management. Pursuant to a delegation of authority published at 36 F.R. 5005, as amended, the responsibilities of the Assistant Secretary for Housing Management encompass all of the Department's housing management functions including all management activities under the National Housing Act.

2. The purpose of this affidavit is to supplement the Affidavit of Mr. Albert J. Kliman, previously submitted to this Court, with respect to the excess rental reserve fund established by Section 236(g) of the National Housing Act, as amended. It is also the purpose of this affidavit to bring to the Court's attention the facts surrounding the Department's decision to refund to certain owners of projects insured under Section 236 of the National Housing Act, a substantial portion of the sums previously derived from them and presently credited to the excess rental reserve fund established by Section 236(g) of the National Housing Act, as amended.

3. The Affidavit of Mr. Kliman stated that the excess rental reserve fund contained $37,823,293.00 as of August 31, 1975. As of October 31, 1975, the excess reserve fund contained $40,647,789.00. No mention was made in Mr. Kliman's Affidavit of a potential charge upon the balance in the excess rental reserve fund. The potential charge on the excess rental reserve fund is explained below.

4. Section 236 was added to the National Housing Act in 1968 to encourage private enterprise to engage in the development of good rental and cooperative housing for lower income families. It authorizes the provision of mortgage insurance and assistance in the form of periodic subsidy payments to an eligible mortgagee in order to reduce the mortgagor's interest costs on a market rate FHA-insured project mortgage down to one percent per annum. The interest subsidy, in turn, makes possible lower rentals to be paid by those occupants who qualify for Section 236 assistance. The rent a tenant must pay is derived through the use of two principles: The "basic rental charge" and the "fair market rental charge". The former is determined on the basis of operating the project with payments of principal and interest due under a mortgage bearing interest at the rate of 1 percent per annum. The latter is determined on the basis of operating the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage.

A qualified tenant must pay the "basic rental charge" or 25 percent of his adjusted income, whichever is greater. However, in no case will a tenant's rental payment exceed the "fair market rental charge".

5. Prior to the 1974 amendments to Section 236, Section 236(g) provided that project owners, "shall, as required by the Secretary, accumulate, safeguard, and periodically pay to the Secretary all rental charges collected in excess of the basic rental charges. Such excess charges shall be deposited by the Secretary in a fund which may be used by him as a revolving fund for the purpose of making interest reduction payments. . . ."

6. This statutory requirement was inserted into the "regulatory agreement" which constitutes a contract between HUD and the project owner (mortgagor) for Section 236 assistance. Each regulatory agreement provides in pertinent part that the project owner shall remit each month to the Department, together with the appropriate reporting form, the amount by which the total rentals collected on the dwelling units exceed the sum of the approved basic rentals for all occupied units. Project owners are required to remit excess rentals to the Department along with HUD Form 3104, "Monthly Report of Excess Income". (Exhibit A) Instructions for calculating such excess rents were set forth in HUD's Insured Project Servicing Handbook.

7. In the latter part of 1973, it came to the attention of HUD's Office of Loan Management, the office responsible for implementing Section 236(g), that a great deal of uncertainty existed on the part of Section 236 project owners concerning the computation of excess rentals. After a review, which began in early 1974, the Office of the Assistant Secretary for Housing Management determined that the manner in which most project owners were computing excess income was not consistent with the statutory requirement as set forth in the regulatory agreement. Because of insufficient instructions accompanying HUD Form 3104, project owners had been making monthly computations of excess rents on a noncumulative basis which provided no offset for rents not collected in prior months. As a result of these miscalculations, project owners were erroneously remitting to HUD amounts in excess of the amounts due under the statutory requirement. The following example is instructive in demonstrating the manner in which this inequitable situation arose:

Basic Rent	Tenant Owes	(Cumulative) Excess, If Any	Actual Rent Collected
First Month			
120	150	30	150
100	100	—	100
110	120	10	—
120	130	10	—
450	500	50	250
Second Month			
120	150	60	150
100	100	—	100
110	240	20	240
120	260	20	260
450	750	100	750

As set forth in this chart, two tenants were delinquent in payment of their rent for the first month. This delinquency, however, was made up in the second month as a result of the payment of two months rent by the two delinquent tenants. In the second month, the project owner collected rents in the amount of $750, some $300 in excess of the sum of the basic rents ($450) for that month. With no allowable offset for rents not collected in the first month, a project owner would be required to remit $300 in excess rents to HUD. However, with the benefit of such an offset, the actual amount required to be remitted to HUD in the second month is $100, which equals the aggregate amount collected in excess of basic rents for the first and second months.

8. The Department determined that the excess rental requirement contained in Section 236(g), properly interpreted, requires a project owner to utilize a method of computation of excess rentals which allows an offset for rents not collected in prior months. In June 1975, final clearance was given to Transmittal No. 24 (Exhibit B), which revised HUD's Insured Project Servicing Handbook to provide the following formula for calculating excess rents:

Total month's rent collections
Less basic rents for all occupied units
Less collection losses
Will equal excess rents

In that same month, HUD Form 3104 was revised to clarify the formula for calculating excess rents. Revised Form 3104 (Exhibit C), provides for a loss incurred in one month to be carried forward so that it offsets actual rent collected in following months. This revised Form 3104 does not represent a new procedure for calculating excess rentals, but rather a clarification of the procedure which project owners should have been utilizing since the inception of the Section 236 program.

9. As a result of this clarification of the procedure for compliance with Section 236(g), a project owner now remits only the amount of excess rents properly computed as required by statute. However, no provision has yet been made to compensate a project owner for excessive payments previously remitted to HUD prior to June 1975. I have been advised by the Office of General Counsel that the Department is legally obligated to refund overpayments erroneously remitted by a project owner as a result of an incorrect interpretation of the requirements of Section 236(g) and the regulatory agreement. On the basis of this legal opinion, the Department has developed and is preparing to implement a procedure for refunding excess rentals erroneously remitted by making the formula set forth in revised Form 3104 and Transmittal No. 24 retroactive to the date that each project owner began remitting excess rentals to HUD. The Department estimates that approximately $18 million is necessary to make these refunds.

10. On August 22, 1974, Congress enacted the Housing and Community Development Act of 1974. Section 212 of that Act amends Section 236(g) of the National Housing Act to provide that excess rentals shall be credited to a reserve fund which is available to make operating subsidy payments authorized by subsection (f)(3). This statutory provision states that, during any period that

the Secretary determines that the balance contained in the reserve fund is sufficient to meet estimated operating subsidy requirements, it shall be credited to appropriations authorized by Section 236(i) and be available until the end of the next fiscal year for the purpose of making operating subsidy payments. As set forth in the Affidavit of H.R. Crawford, previously submitted to this Court, the Secretary has not made such a determination for the following reasons:

> (a) the Department has estimated that it will require an amount aggregating $4.3 million per month or $51.4 million per year to meet nationwide operating subsidy requirements for Fiscal Year 1976; and (b) the amount contained in the reserve fund as of August 31, 1975, was $37,823,293.00 (now $40,647,789.00 as of October 31, 1975).

11. In view of the fact that there is a charge upon the reserve fund for the sums necessary to refund excess rentals erroneously collected prior to June 1975, the Secretary cannot determine as a ministerial act that the balance is sufficient to meet estimated operating subsidy requirements for Fiscal Year 1976. Although the Department has estimated that $18 million will be required to make such a refund, the precise amount required, which can only be accurately determined after project owners submit the necessary financial records, may exceed the $18 million estimate.

/s/ Abner D. Silverman
ABNER SILVERMAN

Subscribed and sworn to before me on this 2nd day of February, 1976.

/s/ Illegible
Notary Public
My Commission Expires
Nov. 14, 1980

ADDENDUM B

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

[Filed Dec. 19, 1975]

Civil Action No. 75-3009 JWC

HILDA ABRAMS, GRETA JAEGER, MARGARET MCEACHIN, individually, and as representatives of a class, PLAINTIFFS,

vs.

CARLA HILLS, as Secretary of the United States Department of Housing and Urban Development, H. R. CRAWFORD, as Assistant Secretary for Housing Management of the United States Department of Housing and Urban Development, ROLAND CANFIELD, as Director of the Los Angeles Area Office of the United States Department of Housing and Urban Development, and G & K MANAGEMENT CO., INC., and MEYLER PARK APARTMENTS, a Limited Partnership, DEFENDANTS.

SECOND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN RESPONSE TO THE COURT'S REQUEST OF DECEMBER 4, 1975

The above entitled cause came on Plaintiffs' motion for summary judgment and this Court having duly considered the memoranda of law, affidavits, and exhibits, and being fully advised, now finds the following:

FINDINGS OF FACT

1. The Plaintiffs, HILDA ABRAMS, GRETA JAEGER and MARGARET McEACHIN, hereinafter "Plaintiffs," are residents of the MEYLER PARK APARTMENTS, each of whom pay more than twenty-five to thirty percent (25-30%) of their "adjusted family incomes" in rent.

2. The class which Plaintiffs represent are past, present and future residents of the Meyler Park Apartments, each of whom pay more than twenty-five to thirty percent (25-30%) of their "adjusted family incomes" in rent.

3. Defendants MEYLER PARK APARTMENTS, a Limited Partnership, and G & K MANAGEMENT COMPANY, INC., hereinafter, "private Defendants," are respectively, the owner and operators of the MEYLER PARK APARTMENTS, a 99-unit Section 236 development in San Pedro, California.

4. Defendants CARLA HILLS, H. R. CRAWFORD, and ROLAND CANFIELD, hereinafter "federal Defendants," are officials of the United States Department of Housing and Urban Development, hereinafter "HUD." Defendant Hills has overall responsibility for the administration and enforcement of all laws, regulations, powers and duties pertaining to the operation of HUD and including the administration of the Section 236 program. Defendant CRAWFORD is responsible, under the authority delegated to him by Defendant Hills, for the management of housing projects constructed under the National Housing Act and including Section 236 housing projects. Defendant CANFIELD is responsible, under the authority delegated to him by Defendant Hills, for the administration and enforcement in Southern California of laws, regulations and procedures of HUD, in particular all those applicable to the Section 236 program.

5. The Section 236 housing program is a part of the National Housing Act, added by the Housing and Development Act of 1968 and designed for the purpose of reducing rentals of low-income families who cannot otherwise afford decent housing.

6. The federal Defendants are responsible for implementation of the Section 236 program, including issuing rules and regulations pursuant thereto, making periodic interest payments on behalf of qualified mortgagors, and regulating project owners with respect to rent, rent increase procedures, and other operating procedures.

7. The National Housing Act was further amended by the Housing and Community Development Act of 1974, hereinafter HCDA 1974, on August 18, 1974, adding Section 212(2)(3) and (3), hereinafter operating subsidy provisions.

8. The reserve fund referred to in Section 212(3) is available to federal Defendants for use as an operating subsidy and was valued as of August 31, 1975 at thirty eight million, three hundred ninety-three thousand, seven hundred twenty dollars ($38,393,720.00).

9. Other funds for the implementation of the operating subsidy provision were appropriated on September 6, 1974, and such funds have not been entirely spent or obligated.

10. The MEYLER PARK APARTMENTS is a 99-unit lower-income housing complex in San Pedro, California, constructed and financed pursuant to Section 236.

11. Qualified tenants in MEYLER PARK APARTMENTS pay no more than twenty-five percent (25%) of their "adjusted family incomes" for rent up to "fair market value," or pay "basic rent," computed on the basis of the amortized mortgage, and operating costs, and approved by federal Defendants.

12. Applications for rent increases are submitted by the private Defendants to the federal Defendants and are approved if they provide reasonable charges to tenants and a fair return to the mortgagor. Such increases must be for demonstrated and bona fide increases in operating expenses and taxes, and sources of funds other than tenants' rent must be maximized.

13. Plaintiffs began their occupancy at the MEYLER PARK APARTMENTS in 1972 and 1973, paying rent at the initial rate of $105.32 per month. Their leases were first amended effective November 1, 1974 to increase the rent ten and eight-tenths percent (10.8%) to $116.00 per month. Said rent raise was attributed at least in part to increased utility costs and property taxes.

14. On or about May 29, 1975, private Defendants notified Plaintiffs of their intention to apply to HUD for approval of a second rent increase, attributing said increase, at least in part, to a dramatic increase in utility costs and an increase in property taxes.

15. On or about July 1, 1975, private Defendants submitted to federal Defendants the request for a rent increase, which was approved by the federal Defendants because of the increased costs for all utilities, property taxes, and other operating costs.

16. On or about July 28, 1975, Plaintiffs were notified that the rent increase had been approved by the federal Defendants and that effective September 1, 1975, their rent would be increased to $128.00 per month, a raise of ten and four tenths percent (10.4%).

17. An increase in plaintiffs' rent at time of twelve dollars (12.00) monthly will result in grave hardship to plaintiffs and a threat of eviction due to their inability to pay the increased rent and severe difficulty in providing themselves with the necessities of life from their disposable incomes.

18. Plaintiffs requested private Defendants to apply for additional assistance payments from the operating subsidy, and to federal Defendants to provide additional assistance payments under the operating subsidy program.

19. There have been increases in property taxes and utilities at MEYLER PARK APARTMENTS since the date that the apartment complex may be determined to be fully occupied which have increased Plaintiffs' rents by at least, if not more than twelve dollars ($12.00) per month, the amount of the present rent increase.

20. Pursuant to the operating subsidy provision, private Defendants are eligible to receive additional assis-

tance payments on behalf of the Plaintiffs and the class they represent.

21. Federal Defendants have not established an initial operating expense level for the MEYLER PARK APARTMENTS, neither by February 18, 1975, not until the present.

22. The federal Defendants have not issued rules and regulations implementing the operating subsidy provision, nor have they accepted applications for additional assistance payments.

23. Federal Defendants have not made additional assistance payments to private Defendants.

24. Contrary to the statute, the federal Defendants are no longer requiring the private Defendants, and all of the Section 236 project owners, to return to the federal Defendants all rent collected in excess of basic rent.

25. Transmittal Notice 24, which amends the Insured Project Servicing Handbook, 4350.1, issued by the federal Defendants permits the private Defendants and all other Section 236 project owners to subtract from total rents collected the basic rents and in addition collection losses.

26. As a result of the implementation of this regulation, the reserve fund from which operating subsidies must be paid is no longer accruing at the maximum rate.

27. This regulation is contrary to the HCDA 1974, and frustrates the purposes and intent of the operating subsidy provision.

28. The federal Defendants are also contemplating using the reserve fund for additional purposes other than the operating subsidy.

29. The federal Defendants may not use the reserve fund for purposes other than the implementation of the operating subsidy unless the reserve fund is adequate to meet the estimated need for such additional assistance payments. If the reserve fund is adequate to meet the needs of the operating subsidies, then the excess charges from the reserve fund shall be credited to the appropriation for the Section 236 program.

30. Private Defendants' request for a rent increase was submitted and approved in violation of the rules and

regulations of the federal Defendants. The requested increase was not considered in light of the applicability and the private Defendants' eligibility for the operating subsidy. Thus the costs justifying the rent increase were not demonstrated or bona fide.

31. The matter in controversy exceeds the sum of $10,000.00 for each Plaintiff, exclusive of interest and costs, in that the difference between the amount of rent Plaintiffs pay and the fair market value of their units when spread over the life of the mortgage represents a value to each Plaintiff exceeding ten thousand dollars ($10,000.00).

CONCLUSIONS OF LAW

1. In all respects set forth in the foregoing Findings of Fact:

2. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1337, 1361, and 5 U.S.C. § 702. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of Fed. R.Civ.Pro. and by 5 U.S.C. § 703.

3. The Court has jurisdiction over the parties to this action.

4. The Plaintiffs, pursuant to Rule 23(a) and (b)(2) of Fed.R.Civ.Pro. are representatives of a class of persons residing in MEYLER PARK APARTMENTS who have been paying, and will in the future pay, a basic rent pursuant to 12 U.S.C. § 1715-z-1 of more

ORDERED that:

1. This Court properly has jurisdiction over this action under 28 U.S.C. §§ 1331, 1337, 1361 and 5 U.S.C. § 702. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of Federal Rules of Civil Procedure and by 5 U.S.C. § 703.

2. The class of persons herein which Plaintiffs represent is certified as those tenants of MEYLER PARK APARTMENTS who pay basic rent as defined in 12 U.S.C. § 1715z-1 which exceeds twenty-five percent (25%) of their "adjusted family income" for rent.

3. The Defendants, Hills, Crawford and Canfield, hereinafter federal Defendants, are hereby ordered to immediately implement Section 212(2)(3) and (3) of the Housing and Community Development Act of 1974, hereinafter operating subsidy provision, by establishing for MEYLER PARK APARTMENTS an initial operating expense level, and making additional assistance payments to the Defendants MEYLER PARK APARTMENTS, Ltd., and G & K MANAGEMENT CO., INC., hereinafter private Defendants, for any increases in rentals attributable to the excess of the sum of the cost of reasonable and comparable property taxes and utilities over the initial operating expense level provided that such payments shall not reduce the rent for any unit below twenty-five to thirty (25-30%) of Plaintiffs' and of the class they represent, "adjusted family income," and that such payments shall be made retroactive to February 18, 1975.

7. Plaintiffs are entitled to costs of this action as against the federal Defendants.

Further ordered:

This Court will retain jurisdiction over the parties herein to insure that this Order is properly effectuated.

DATED: Dec. 19, 1975

/s/ Judge J. W. Curtis
JUDGE J. W. CURTIS
United States District Court
Central District, California

Filed 1/26/76

Taxed costs in sum of $122.35, against Illegible

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 75-3009-JWC

[Filed May 19, 1976]

HILDA ABRAMS, GRETA JAEGER, MARGARET MCEACHINE, individually, and as representatives of a class,
PLAINTIFFS,

v.

CARLA HILLS, as Secretary of the United States Department of Housing and Urban Development, et al.,
DEFENDANTS.

SUMMARY JUDGMENT

In accordance with the findings of fact and conclusions of law made by this court, the plaintiffs' motion for summary judgment is hereby granted.

1. The class of persons herein which plaintiffs represent is certified as past, present and future tenants of Meyler Park Apartments who pay basic rent as defined in 123 U.S.C. § 1715z-1 which exceeds twenty-five to thirty percent (25%-30%) of their "adjusted family income" for rent.

2. The defendants, Hills, Crawford, and Canfield, hereinafter federal defendants, are hereby ordered to immediately implement Section 212(2)(3) and (3) of the Housing and Community Development Act of 1974, hereinafter operating subsidy provision, by establishing for Meyler Park Apartments an initial operating expense level, and making additional assistance payments to the defendants Meyler Park Apartments, Ltd. and G & K Management Co., Inc., hereinafter private defendants, for any increases in rentals attributable to the excess of the sum of the cost of property taxes and utilities over the initial operating expense level provided that such payments shall not reduce the rent for any unit below twenty-five to thirty percent (25%-30%) of plaintiffs' and of the

class they represent, "adjusted family income," and that such payments shall be made retroactive to February 18, 1975.

3. Plaintiffs are entitled to costs of this action as against the federal defendants.

FURTHER ORDERED:

This court will retain jurisdiction over the parties herein to insure that this order is properly effectuated.

DATED: May 19, 1976

/s/ Jesse W. Curtis
JESSE W. CURTIS
United States
District Judge

SUPREME COURT OF THE UNITED STATES

No. 76-1234

PATRICIA R. HARRIS, Secretary of Housing and Urban Development, et al., PETITIONERS,

v.

BARBARA ROSS, et al.

ORDER ALLOWING CERTIORARI. Filed May 23, 1977.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 76-1261 and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 76-1261

PATRICIA R. HARRIS, Secretary of Housing and Urban Development, et al., PETITIONERS,

v.

HILDA ABRAMS, et al.

ORDER ALLOWING CERTIORARI. Filed May 23, 1977.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is consolidated with No. 76-1234 and a total of one hour is allotted for oral argument.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 242925 40